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*Counsel for Highland Capital Management, L.P.*

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

In re:	§ § Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§ § Case No. 19-34054-sgj11
Reorganized Debtor.	§ §
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ § Adversary Proceeding No.
Plaintiff,	§ § 21-03004-sgj
vs.	§ §
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,	§ §
Defendant.	§ §

**REORGANIZED DEBTOR’S WITNESS AND EXHIBIT LIST WITH RESPECT  
TO EVIDENTIARY HEARING TO BE HELD ON JANUARY 10, 2022**

<sup>1</sup> The Reorganized Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



Highland Capital Management, L.P. (the “Reorganized Debtor”) submits the following witness and exhibit list with respect to *Defendant’s Second Motion for Leave to Amend Answer and Brief in Support Thereof* [Docket No. 82], which the Court has set for hearing at 9:30 a.m. (Central Time) on January 10, 2022 (the “Hearing”) in the above-styled adversary proceeding (the “Adversary Proceeding”).

**A. Witnesses:**

1. Dennis C. Sauter;
2. Any witness identified by or called by any other party; and
3. Any witness necessary for rebuttal.

**B. Exhibits:**

<b>Number</b>	<b>Exhibit</b>	<b>Offered</b>	<b>Admitted</b>
1.	Complaint against HCMFA [Docket No. 109]		
2.	Amended Complaint against HCMS [Docket No. 109]		
3.	Highland’s Consolidated Financial Statements, dated December 31, 2018 [Docket No. 109]		
4.	HCMFA’s Incumbency Certificate, April 2019		
5.	Email string re 15(c) Follow up (10/2/21 – 10/6/21)		
6.	HCMFA’s Consolidated Financial Statements and Supplemental Information (December 31, 2018) [Docket No. 109]		
7.	5/2/19 e-mail and attachment (Promissory Note) [Docket No. 109]		
8.	5/3/19 e-mail [Docket No. 109]		
9.	5/3/19 Promissory Note [Docket No. 109]		

Number	Exhibit	Offered	Admitted
10.	Supplemental 15(c) Information Request 10.23.20 [Docket No. 109]		
11.	James Dondero's Objections and Responses to Highland Capital Management, L.P.'s Second Set of Interrogatories [Docket No. 109]		
12.	Peet Burger 7/30/21 Deposition Transcript [Docket No. 109]		
13.	James Dondero 11/4/21 Deposition Transcript [Docket No. 109]		
14.	Frank Waterhouse 10/19/21 Deposition Transcript [Docket No. 109]		
15.	Declaration of Dennis C. Sauter, Jr. [Docket No. 109]		
16.	Email from David Klos to the Debtor's Corporate Accounting group, with a copy to Melissa Schroth, dated February 2, 2018 [Docket No. 109]		
17.	(a) Email from Blair Hillis to David Klos and the Debtor's Corporate Accounting group, with a copy to Melissa Schroth, dated August 1, 2018 and (b) an email from David Klos to the Debtor's Corporate Accounting group, with a copy to Melissa Schroth, dated August 1, 2018 [Docket No. 109]		
18.	Dustin Norris 12/1/21 Deposition Transcript [Docket No. 109]		
19.	Dennis C. Sauter 11/17/21 Deposition Transcript [Docket No. 109]		
20.	Kristin Hendrix 10/27/21 Deposition Transcript [Docket No. 109]		
21.	David Klos 10/27/21 Deposition Transcript [Docket No. 109]		
22.	Debtor's back-up for the December Monthly Operating Report, titled "December 2019 Due From Affiliates" [Docket No. 109]		
23.	Debtor's back-up for the September Monthly Operating Report, titled "September 2020 Due From Affiliates" [Docket No. 109]		
24.	Debtor's back-up for the January 2021 Monthly Operating Report, titled "January 2021 Due From Affiliates" [Docket No. 109]		

Number	Exhibit	Offered	Admitted
25.	Debtor's January 2021 Affiliates Loan Receivables Summary [Docket No. 109]		
26.	Email from Kristin Hendrix to Jim Dondero, with a copy to Frank Waterhouse, dated August 29, 2020 regarding 7/31/20 HCMLP Requests ( <b>REDACTED</b> ) [Docket No. 109]		
27.	Email from Kristin Hendrix to Jim Dondero, with a copy to Frank Waterhouse and David Klos, dated April 27, 2020 regarding HCMLP Schedule of Investments ( <b>REDACTED</b> ) [Docket No. 109]		
28.	Declaration of David Klos in Support of HCMLP's Motion for Partial Summary Judgment [Docket No. 109]		
29.	Declaration of Hayley R. Winograd in Support of HCMLP's Opposition to HCMFA's Second Motion to Amend [Docket No. 109]		
30.	Email to counsel for HCMFA on October 25, 2021 producing word versions of the HCMFA Notes [Docket No. 109]		
31.	Any document entered or filed in the Adversary Proceeding, including any exhibits thereto		
32.	Any document entered or filed in the Reorganized Debtor's Bankruptcy Case, including any exhibits thereto		
33.	All exhibits necessary for impeachment and/or rebuttal purposes		
34.	All exhibits identified by or offered by any other party at the Hearing		

Dated: January 6, 2022.

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

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*/s/ Zachery Z. Annable*

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*Counsel for Highland Capital Management, L.P.*

# **EXHIBIT 1**

PACHULSKI STANG ZIEHL & JONES LLP  
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*Counsel for Highland Capital Management, L.P.*

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>  
Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT FUND  
ADVISORS, L.P.,  
Defendant.

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§  
§ Adversary Proceeding No.  
§  
§  
§  
§  
§

<sup>1</sup> 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.



**COMPLAINT FOR (I) BREACH OF CONTRACT  
AND (II) TURNOVER OF PROPERTY OF THE DEBTOR'S ESTATE**

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Plaintiff, Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), by its undersigned counsel, as and for its complaint (the "Complaint") against defendant, Highland Capital Management Fund Advisors, L.P. ("HCMFA" or "Defendant"), alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

**PRELIMINARY STATEMENT**

1. The Debtor brings this action against HCMFA as a result of HCMFA's defaults under two promissory notes executed by HCMFA in favor of the Debtor in the aggregate original principal amount of \$7,400,000 and payable upon the Debtor's demand. Despite due demand, HCMFA has failed to pay amounts due and owing under the notes and the accrued but unpaid interest thereon.

2. Through this Complaint, the Debtor seeks (a) damages from HCMFA in an amount equal to (i) the aggregate outstanding principal due under the Notes (as defined below), plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses, as provided for in the Notes), and (b) turnover by HCMFA to the Debtor of the foregoing amounts.

**JURISDICTION AND VENUE**

3. This adversary proceeding arises in and relates to the Debtor's case pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court") under chapter 11 of the Bankruptcy Code.



4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

5. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b), and, pursuant to Rule 7008 of the Bankruptcy Rules, the Debtor consents to the entry of a final order by the Court in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

### **THE PARTIES**

7. The Debtor is a limited liability partnership formed under the laws of Delaware with a business address at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

8. Upon information and belief, HCMFA is a limited partnership with offices located in Dallas, Texas and is organized under the laws of the state of Delaware.

### **CASE BACKGROUND**

9. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Delaware Court”), Case No. 19-12239 (CSS) (the “Highland Bankruptcy Case”).

10. On October 29, 2019, the U.S. Trustee in the Delaware Court appointed an Official Committee of Unsecured Creditors (the “Committee”) with the following members: (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis LP and Acis GP.

11. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].<sup>2</sup>

12. 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 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

### **STATEMENT OF FACTS**

#### **A. The HCMFA Notes**

13. HCMFA is the maker under a series of promissory notes in favor of the Debtor.

14. Specifically, on May 2, 2019, HCMFA executed a promissory note in favor of the Debtor, as payee, in the original principal amount of \$2,400,000 ("HCMFA's First Note"). A true and correct copy of HCMFA's First Note is attached hereto as **Exhibit 1**.

15. On May 3, 2019, HCMFA executed a promissory note in favor of the Debtor, as payee, in the original principal amount of \$5,000,000 ("HCMFA's Second Note," and together with HCMFA's First Note, the "Notes"). A true and correct copy of HCMFA's Second Note is attached hereto as **Exhibit 2**.

16. Section 2 of each Note provides: "**Payment of Principal and Interest**. The accrued interest and principal of this Note shall be due and payable on demand of the Payee."

17. Section 4 of each Note provides:

**Acceleration Upon Default**. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of the Payee in exercising any right, power, or privilege hereunder shall operate as a waiver hereof.

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<sup>2</sup> All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.

18. Section 6 of each Note provides:

**Attorneys' Fees.** If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

**B. HCMFA's Default under Each Note**

19. By letter dated December 3, 2020, the Debtor made demand on HCMFA for payment under the Notes by December 11, 2020 (the "Demand Letter"). A true and correct copy of the Demand Letter is attached hereto as **Exhibit 3**. The Demand Letter provided:

By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of \$7,687,653.07, which represents all accrued interest and principal through and including December 11, 2020.

**Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.**

Demand Letter (emphasis in the original).

20. Despite the Debtor's demand, HCMFA did not pay all or any portion of the amounts demanded by the Debtor on December 11, 2020 or at any time thereafter.

21. As of December 11, 2020, there was an outstanding principal amount of \$2,457,517.15 on HCMFA's First Note and accrued but unpaid interest in the amount of \$35,884.46, resulting in a total outstanding amount as of that date of \$2,493,401.61.

22. As of December 11, 2020, there was an outstanding principal balance of \$5,119,827.40 on HCMFA's Second Note and accrued but unpaid interest in the amount of \$74,424.05, resulting in a total outstanding amount as of that date of \$5,194,251.45.

23. Thus, as of December 11, 2020, the total outstanding principal and accrued but unpaid interest due under the Notes was \$7,687,653.07

24. Pursuant to Section 4 of each Note, each Note is in default and is currently due and payable.

**FIRST CLAIM FOR RELIEF**  
**(For Breach of Contract)**

25. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

26. Each Note is a binding and enforceable contract.

27. HCMFA breached each Note by failing to pay all amounts due to the Debtor upon the Debtor's demand.

28. Pursuant to each Note, the Debtor is entitled to damages from HCMFA in an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses) for HCMFA's breach of its obligations under each of the Notes.

29. As a direct and proximate cause of HCMFA's breach of each Note, the Debtor has suffered damages in the total amount of at least \$7,687,653.07 as of December 11, 2020, plus an amount equal to all accrued but unpaid interest from that date, plus the Debtor's cost of collection.

**SECOND CLAIM FOR RELIEF**  
**(Turnover by HCMFA Pursuant to 11 U.S.C. § 542(b))**

30. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

31. HCMFA owes the Debtor an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs

and reasonable attorneys' fees and expenses) for HCMFA's breach of its obligations under each of the Notes.

32. Each Note is property of the Debtor's estate, and the amounts due under each Note are matured and payable upon demand.

33. HCMFA has not paid the amounts due under each Note to the Debtor.

34. The Debtor has made demand for the turnover of the amounts due under each Note.

35. As of the date of filing of this Complaint, HCMFA has not turned over to the Debtor all or any of the amounts due under each of the Notes.

36. The Debtor is entitled to the turnover of all amounts due under each of the Notes.

WHEREFORE, the Debtor prays for judgment as follows:

- (i) On its First Claim for Relief, damages in an amount to be determined at trial, including, among other things, (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses);
- (ii) On its Second Claim for Relief, ordering turnover by HCMFA to the Debtor of an amount equal to (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses); and
- (iii) Such other and further relief as this Court deems just and proper.

Dated: January 22, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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Ira D. Kharasch (CA Bar No. 109084)  
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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

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*Counsel for Highland Capital Management, L.P.*

# EXHIBIT 1

**EXHIBIT 1**

## PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.



7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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FRANK WATERHOUSE

# EXHIBIT 2

EXHIBIT 2

## PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



---

FRANK WATERHOUSE

# EXHIBIT 3

EXHIBIT 3

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

December 3, 2020

Highland Capital Management Fund Advisors, LP  
 c/o Highland Capital Management, L.P.  
 300 Crescent Court, Suite 700  
 Dallas, Texas 75201  
 Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Fund Advisors, LP (“Maker”) entered into the following promissory notes (collectively, the “Notes”), among others,<sup>1</sup> in favor of Highland Capital Management, L.P. (“Payee”):

<b>Date Issued</b>	<b>Original Principal Amount</b>	<b>Outstanding Principal Amount (12/11/20)</b>	<b>Accrued But Unpaid Interest (12/11/20)</b>	<b>Total Amount Outstanding (12/11/20)</b>
5/2/2019	\$2,400,000	\$2,457,517.15	\$35,884.46	\$2,493,401.61
5/3/2019	\$5,000,000	\$5,119,827.40	\$74,424.05	\$5,194,251.45
<b>TOTALS</b>	<b>\$7,400,000</b>	<b>\$7,577,344.55</b>	<b>\$110,308.52</b>	<b>\$7,687,653.07</b>

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of \$7,687,653.07, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

**Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.**

Payments on the Notes must be made in immediately available funds. Payee’s wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are

<sup>1</sup> Maker is also obligated to pay amounts due under promissory notes issued in favor of Payee prior to April 15, 2019. Pursuant to that certain *Acknowledgment from HCMLP*, dated as of April 15, 2019, Payee agreed not to demand payment on such amounts until May 31, 2021. Payee reserves all rights with respect to such amounts.

expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.  
Highland Capital Management, L.P.  
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso  
James Romey  
Jeffrey Pomerantz  
Ira Kharasch  
Gregory Demo  
DC Sauter

### Appendix A


ABA #: 322070381  
Bank Name: East West Bank  
Account Name: Highland Capital Management, LP  
Account #: 5500014686



**B1040 (FORM 1040) (12/15)**

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b> Highland Capital Management, L.P.	<b>DEFENDANTS</b> Highland Capital Management Fund Advisors, L.P.	
<b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b> Hayward LLP 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100	<b>ATTORNEYS (If Known)</b> Munsch Hardt Kopf & Harr, P.C. 500 N. Akard Street, Suite 3800 Dallas, Texas 75201 Tel.: (214) 855-7500	
<b>PARTY (Check One Box Only)</b> <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY (Check One Box Only)</b> <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
<b>CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)</b> Count 1: Breach of contract; Count 2: Turnover pursuant to 11 U.S.C. 542		
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<p><b>FRBP 7001(1) – Recovery of Money/Property</b></p> <input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other <p><b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b></p> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property <p><b>FRBP 7001(3) – Approval of Sale of Property</b></p> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) <p><b>FRBP 7001(4) – Objection/Revocation of Discharge</b></p> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) <p><b>FRBP 7001(5) – Revocation of Confirmation</b></p> <input type="checkbox"/> 51-Revocation of confirmation <p><b>FRBP 7001(6) – Dischargeability</b></p> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <p style="text-align: center;">(continued next column)</p>	<p><b>FRBP 7001(6) – Dischargeability (continued)</b></p> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other <p><b>FRBP 7001(7) – Injunctive Relief</b></p> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other <p><b>FRBP 7001(8) Subordination of Claim or Interest</b></p> <input type="checkbox"/> 81-Subordination of claim or interest <p><b>FRBP 7001(9) Declaratory Judgment</b></p> <input type="checkbox"/> 91-Declaratory judgment <p><b>FRBP 7001(10) Determination of Removed Action</b></p> <input type="checkbox"/> 01-Determination of removed claim or cause <p><b>Other</b></p> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$7,687,653.07 plus interest, fees, and expenses	
Other Relief Sought		

**B1040 (FORM 1040) (12/15)**

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.		BANKRUPTCY CASE NO. 19-34054-sgj11
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas	DIVISION OFFICE Dallas	NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE January 22, 2021	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable	

**INSTRUCTIONS**

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

## **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*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
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*Counsel for Highland Capital Management, L.P.*

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding No.
vs.	§	21-03006
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC, JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST	§	
Defendants.	§	

<sup>1</sup> 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.



**AMENDED COMPLAINT FOR (I) BREACH OF CONTRACT,  
(II) TURNOVER OF PROPERTY, (III) FRAUDULENT TRANSFER, AND (IV)  
BREACH OF FIDUCIARY DUTY**

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Plaintiff, Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), and the plaintiff (the “Plaintiff”) in the above-captioned adversary proceeding (the “Adversary Proceeding”), by its undersigned counsel, as and for its amended complaint (the “Complaint”) against defendants Highland Capital Management Services, Inc. (“HCMS”), James Dondero (“Mr. Dondero”), Nancy Dondero (“Ms. Dondero”), and The Dugaboy Investment Trust (“Dugaboy” and together with HCMS, Mr. Dondero, and Ms. Dondero, the “Defendants”) alleges upon knowledge of its own actions and upon information and belief as to other matters as follows:

**PRELIMINARY STATEMENT**

1. The Debtor brings this action against Defendants in connection with HCMS’s defaults under (i) four demand notes, in the aggregate principal amount of \$900,000, and payable upon the Debtor’s demand, and (ii) one term note, in the aggregate principal amount of \$20,247,628.02, and payable in the event of default, all executed by HCMS in favor of the Debtor. HCMS has failed to pay amounts due and owing under the notes and the accrued but unpaid interest thereon.

2. In paragraph 56 of HCMS’s *First Amended Answer to Plaintiff’s Complaint* [Docket No. 34], HCMS contends that the Debtor orally agreed to relieve it of the obligations under the Notes (as defined below) upon fulfillment of “conditions subsequent” (the “Alleged Agreement”). HCMS further contends that the Alleged Agreement was entered into between James Dondero, acting on behalf of HCMS, and his sister, Nancy Dondero, as representative of a majority of the Class A shareholders of the Plaintiff, including Dugaboy (the “Representative”),

acting on behalf of the Debtor. At the time Mr. Dondero entered into the Alleged Agreement on behalf of HCMS, he controlled both HCMS and the Debtor and was the lifetime beneficiary of Dugaboy.

3. Based on its books and records, discovery to date, and other facts, the Debtor believes that the Alleged Agreement is a fiction created after the commencement of this Adversary Proceeding for the purpose of avoiding or at least delaying paying the obligations due under the Notes.

4. Nevertheless, the Debtor amends its Complaint to add certain claims and name additional parties who would be liable to the Debtor if the Alleged Agreement were determined to exist and be enforceable. Specifically, in addition to pursuing claims against HCMS for breach of its obligations under the Notes and for turnover, the Debtor adds alternative claims (a) against HCMS for actual fraudulent transfer and aiding and abetting Dugaboy in its breach of fiduciary duty, (b) against Dugaboy for declaratory relief and for breach of fiduciary duty, and (c) against Nancy Dondero for aiding and abetting Dugaboy in the breach of his fiduciary duties.

5. As remedies, the Debtor seeks (a) damages from HCMS in an amount equal to (i) the aggregate outstanding principal due under the Notes (as defined below), plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses, as provided for in the notes), for HCMS's breach of its obligations under the Notes, (b) turnover by HCMS to the Debtor of the foregoing amounts; (c) avoidance of the Alleged Agreement and the transfers thereunder and recovery of the funds transferred from the Plaintiff to, or for the benefit of, HCMS pursuant to the Notes; (d) declaratory relief, and (e) damages arising from the Defendants' breach of fiduciary duties or aiding and abetting thereof.

**JURISDICTION AND VENUE**

6. This adversary proceeding arises in and relates to the Debtor’s case pending before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Court”) under chapter 11 of the Bankruptcy Code.

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

8. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b), and, pursuant to Rule 7008 of the Bankruptcy Rules, the Debtor consents to the entry of a final order by the Court in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

**THE PARTIES**

10. The Debtor is a limited liability partnership formed under the laws of Delaware with a business address at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

11. Upon information and belief, HCMS is a company with offices located in Dallas, Texas, and is incorporated in the state of Delaware.

12. Upon information and belief, Mr. Dondero is an individual residing in Dallas, Texas. He is the co-founder of the Debtor and was the Debtor’s President and Chief Executive Officer until his resignation on January 9, 2020. At all relevant times, Mr. Dondero controlled HCRE; Mr. Dondero also controlled the Debtor until January 9, 2020.

13. Upon information and belief, Dugaboy is (a) a limited partner of the Debtor, and (b) one of Mr. Dondero’s family investment trusts for which is he a lifetime beneficiary.

14. Upon information and belief, Nancy Dondero is an individual residing in the state of Florida and who is Mr. Dondero's sister, and a trustee of Dugaboy.

### **CASE BACKGROUND**

15. On October 16, 2019, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Court"), Case No. 19-12239 (CSS) (the "Highland Bankruptcy Case").

16. On October 29, 2019, the U.S. Trustee in the Delaware Court appointed an Official Committee of Unsecured Creditors (the "Committee") with the following members: (a) Redeemer Committee of Highland Crusader Fund ("Redeemer"), (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis Capital Management, L.P. and Acis Capital Management GP LLC (collectively, "Acis").

17. On June 25, 2021, the U.S. Trustee in this Court filed that certain *Notice of Amended Unsecured Creditors' Committee* [Docket No. 2485] notifying the Court that Acis and Redeemer had resigned from the Committee.

18. On December 4, 2019, the Delaware Court entered an order transferring venue of the Highland Bankruptcy Case to this Court [Docket No. 186].<sup>2</sup>

19. 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 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

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<sup>2</sup> All docket numbers refer to the main docket for the Highland Bankruptcy Case maintained by this Court.



## STATEMENT OF FACTS

### **A. The HCMS Demand Notes**

20. HCMS is the maker under a series of demand notes in favor of the Debtor.

21. Specifically, on March 28, 2018, HCMS executed a demand note in favor of the Debtor, as payee, in the original principal amount of \$150,000 (“HCMS’s First Demand Note”). A true and correct copy of HCMS’s First Demand Note is attached hereto as **Exhibit 1**.

22. On June 25, 2018, HCMS executed a demand note in favor of the Debtor, as payee, in the original principal amount of \$200,000 (“HCMS’s Second Demand Note”). A true and correct copy of HCMS’s Second Demand Note is attached hereto as **Exhibit 2**.

23. On May 29, 2019, HCMS executed a demand note in favor of the Debtor, as payee, in the original principal amount of \$400,000 (“HCMS’s Third Demand Note”). A true and correct copy of HCMS’s Third Demand Note is attached hereto as **Exhibit 3**.

24. On June 26, 2019, HCMS executed a demand note in favor of the Debtor, as payee, in the original principal amount of \$150,000 (“HCMS’s Fourth Demand Note,” and collectively, with HCMS’s First Demand Note, HCMS’s Second Demand Note, and HCMS’s Third Demand Note, the “Demand Notes”). A true and correct copy of HCMS’s Fourth Demand Note is attached hereto as **Exhibit 4**.

25. Section 2 of the Demand Notes provide: “**Payment of Principal and Interest**. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.”

26. Section 4 of the Demand Notes provide:

**Acceleration Upon Default**. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and

the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of the Payee in exercising any right, power, or privilege hereunder shall operate as a waiver hereof.

27. Section 6 of the Demand Notes provide:

**Attorneys' Fees.** If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

**B. HCMS's Defaults Under Each Demand Note**

28. By letter dated December 3, 2020, the Debtor made demand on HCMS for payment under the Demand Notes by December 11, 2020 (the "Demand Letter"). A true and correct copy of the Demand Letter is attached hereto as **Exhibit 5**. The Demand Letter provided:

By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of \$947,519.43, which represents all accrued interest and principal through and including December 11, 2020.

**Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.**

Demand Letter (emphasis in the original).

29. Despite the Debtor's demand, HCMS did not pay all or any portion of the amounts demanded by the Debtor on December 11, 2020.

30. As of December 11, 2020, there was an outstanding principal amount of \$158,776.59 on HCMS's First Demand Note and accrued but unpaid interest in the amount of \$3,257.32, resulting in a total outstanding amount as of that date of \$162,033.91.

31. As of December 11, 2020, there was an outstanding principal balance of \$212,403.37 on HCMS's Second Demand Note and accrued but unpaid interest in the amount of \$2,999.54, resulting in a total outstanding amount as of that date of \$215,402.81.

32. As of December 11, 2020, there was an outstanding principal balance of \$409,586.19 on HCMS's Third Demand Note and accrued but unpaid interest in the amount of \$5,256.62, resulting in a total outstanding amount as of that date of \$414,842.81.

33. As of December 11, 2020, there was an outstanding principal balance of \$153,564.74 on HCMS's Fourth Demand Note and accrued but unpaid interest in the amount of \$1,675.16, resulting in a total outstanding amount as of that date of \$155,239.90.

34. Thus, as of December 11, 2020, the total outstanding principal and accrued but unpaid interest due under the Demand Notes was \$947,519.43. Pursuant to Section 4 of each Demand Note, each Note is in default, and is currently due and payable.

**C. The HCMS Term Note**

35. HCMS is the maker under a term note in favor of the Debtor.

36. Specifically, on May 31, 2017, HCMS executed a term note in favor of the Debtor, as payee, in the original principal amount of \$20,247,628.02 (the "Term Note," and together with the Demand Notes, the "Notes"). A true and correct copy of the Term Note is attached hereto as **Exhibit 6**.

37. Section 2 of the Term Note provides: "**Payment of Principal and Interest**. Principal and interest under this Note shall be due and payable as follows:

**2.1 Annual Payment Dates.** During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31<sup>st</sup> day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this note.

**2.2 Final Payment Date.** The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

38. Section 3 of the Note provides:

**Prepayment Allowed: Renegotiation Discretionary.** Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

39. Section 4 of the Term Note provides:

**Acceleration Upon Default.** Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of the Payee in exercising any right, power, or privilege hereunder shall operate as a waiver hereof.

40. Section 6 of the Term Note provides:

**Attorneys' Fees.** If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

**D. HCMS's Default Under the Term Note**

41. HCMS failed to make the payment due under the Term Note on December 31, 2020.

42. By letter dated January 7, 2021, the Debtor made demand on HCMS for immediate payment under the Term Note (the "Second Demand Letter"). A true and correct copy of the Second Demand Letter is attached hereto as **Exhibit 7**. The Second Demand Letter provides:

Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is \$6,757,248.95; however, interest continues to accrue under the Note.

**The Note is in default, and payment is due immediately.**

Second Demand Letter (emphasis in the original).

43. As of January 8, 2021, the total outstanding principal and accrued but unpaid interest under the Term Note was \$6,757,248.95.

44. Pursuant to Section 4 of the Term Note, the Note is in default, and is currently due and payable.

**E. The Debtor Files the Original Complaint**

45. On January 22, 2021, the Debtor filed the *Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate* [Docket No. 1] (the "Original Complaint"). In the Original Complaint, the Debtor brought claims for (i) breach of contract for HCMS's breach of its obligations under the Notes and (ii) turnover by HCMS for the outstanding amounts under the Notes, plus all accrued and unpaid interest until the date of payment plus the Debtor's costs of collection and reasonable attorney's fees.

**F. HCMS's Affirmative Defenses**

46. On March 13, 2021, HCMS filed *Highland Capital Management Services, Inc.'s Answer to Plaintiff's Complaint* [Docket No. 6] (the "Original Answer"). In its Original Answer, HCMS asserted four affirmative defenses: (i) the claims are barred in whole or in part under the doctrines of justification or repudiation, (ii) waiver, (iii) estoppel, and (iv) offset and/or setoff (the "Setoff Defense"). *See id.* ¶¶ 53-56.

47. On June 11, 2021, HCMS filed its *First Amended Answer to Plaintiff's Complaint* [Docket No. 34] (the "Amended Answer"), that omitted the Setoff Defense but asserted two affirmative defenses: (i) the Debtor previously agreed that it would not collect on the Notes

“upon fulfillment of conditions subsequent” (*i.e.*, the Alleged Agreement) *id.* ¶ 56, and (ii) the Notes are “ambiguous,” *id.* ¶ 57.

48. According to HCMS, the Alleged Agreement was orally entered into “sometime between December of the year each note was made and February of the following year.”

49. According to HCMS, Mr. Dondero, acting on its behalf, entered into the Alleged Agreement with his sister, Nancy Dondero, acting as the Representative.

50. Mr. Dondero controlled the Debtor at the time he entered into the Alleged Agreement on behalf of HCMS.

51. Upon information and belief, the Debtor’s books and records do not reflect the Alleged Agreement.

**G. Dugaboy Lacked Authority to Act on Behalf of the Debtor**

52. Under section 4.2 of the *Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P.* (the “Limited Partnership Agreement”), and attached hereto as **Exhibit 8**, Dugaboy was not authorized to enter into the Alleged Agreement on behalf of the Partnership, or otherwise bind the Partnership (as “Partnership” is defined in the Limited Partnership Agreement).

53. Section 4.2(b) of the Limited Partnership Agreement states:

**Management of Business.** No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership’s business, transact any business in the Partnership’s name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

**Exhibit 8**, § 4.2(b).

54. No provision in the Limited Partnership Agreement authorizes any of the Partnership’s limited partners to bind the Partnership.

55. Nancy Dondero also lacked authority to enter into the Alleged Agreement or to otherwise bind the Debtor.

**FIRST CLAIM FOR RELIEF**

**(Against HCMS)**

**(For Breach of Contract)**

56. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

57. The Notes are binding and enforceable contracts.

58. HCMS breached each Demand Note by failing to pay all amounts due to the Debtor upon the Debtor's demand.

59. HCMS breached the Term Note by failing to pay all amounts due to the Debtor upon HCMS's default and acceleration.

60. Pursuant to each Note, the Debtor is entitled to damages from HCMS in an amount equal to (i) the aggregate outstanding principal due under each Note, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses), for HCMS's breach of its obligations under each of the Demand Notes.

61. As a direct and proximate cause of HCMS's breach of each Demand Note, the Debtor has suffered damages in the amount of at least \$947,519.43, as of December 11, 2020, plus an amount equal to all accrued but unpaid interest from that date, plus the Debtor's cost of collection.

62. As a direct and proximate cause of HCMS's breach of the Term Note, the Debtor has suffered damages in the amount of at least \$6,757,248.95, as of January 8, 2021, plus

an amount equal to all accrued but unpaid interest from that date, plus the Debtor's cost of collection.

**SECOND CLAIM FOR RELIEF**

**(Against HCMS)**

**(Turnover by HCMS Pursuant to 11 U.S.C. § 542(b))**

63. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

64. HCMS owes the Debtor an amount equal to (i) the aggregate outstanding principal due under each of the Notes, plus (ii) all accrued and unpaid interest thereon until the date of payment, plus (iii) an amount equal to the Debtor's costs of collection (including all court costs and reasonable attorneys' fees and expenses), for HCMS's breach of its obligations under each of the Notes

65. Each Demand Note is property of the Debtor's estate and the amounts due under each Demand Note is matured and payable upon demand.

66. The Term Note is property of the Debtor's estate and the amounts due under the Term Note is matured and payable upon default and acceleration.

67. The Debtor has made demand for turnover of the amounts due under each of the Notes

68. As of the date of filing this Complaint, HCMS has not turned over to the Debtor all or any of the amounts due under each of the Notes.

69. The Debtor is entitled to the turnover of all amounts due under each of the Notes.



**THIRD CLAIM FOR RELIEF**

**(Against HCMS)**

**(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. §§ 548(a)(1)(A) and 550)**

70. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

71. The Debtor made the transfers pursuant to the Alleged Agreement within two years of the Petition Date.

72. HCMS entered into the Alleged Agreement with actual intent to hinder, delay, or defraud a present or future creditor, demonstrated by, *inter alia*:

- (a) The transfers were made to, or for the benefit of, HCMS, an insider of the Debtor.
- (b) Mr. Dondero entered into the Alleged Agreement on behalf of HCMS with his sister, Nancy Dondero.
- (c) Mr. Dondero did not inform the Debtor's CFO or outside auditors about the Alleged Agreement.
- (d) The Debtor's books and record do not reflect the Alleged Agreement.
- (e) The Alleged Agreement was not subject to negotiation.
- (f) The value of the consideration received by the Debtor for the transfers was not reasonably equivalent in value.

73. The pattern of conduct, series of transactions, and general chronology of events under inquiry in connection with the debt HCMS incurred under the Notes demonstrates a scheme of fraud.

74. Pursuant to 11 U.S.C. § 550, the Debtor is entitled to recover for the benefit of the Debtor's estates the transfers made in exchange for the Alleged Agreement from HCMS.

75. Accordingly, the Debtor is entitled to a judgement: (i) avoiding the Alleged Agreement and the transfers thereunder, and (ii) recovering from HCMS an amount equal to all obligations remaining under the Notes.

**FOURTH CLAIM FOR RELIEF**  
**(Against HCMS)**  
**(Avoidance and Recovery of Actual Fraudulent Transfer Under 11 U.S.C. §§ 544(b) and 550, and Tex. Bus. & C. Code § 24.005(a)(1))**

76. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

77. The Debtor made the transfers pursuant to the Alleged Agreement after, or within a reasonable time before, creditors' claims arose.

78. Mr. Dondero entered into the Alleged Agreement on behalf of HCMS with actual intent to hinder, delay, or defraud a present or future creditor of the Debtor, demonstrated by, *inter alia*:

- (g) The transfers were made to, or for the benefit of, HCMS, an insider of the Debtor.
- (h) Mr. Dondero entered into the Alleged Agreement on behalf of HCMS with his sister, Nancy Dondero.
- (i) Mr. Dondero did not inform the Debtor's CFO or outside auditor's about the Alleged Agreement.
- (j) Upon information and belief, the Debtor's books and record do not reflect the Alleged Agreement.
- (k) The Alleged Agreement was not subject to negotiation.
- (l) The value of the consideration received by the Debtor for the transfers was not reasonably equivalent in value.

79. Pursuant to 11 U.S.C. § 550, the Debtor is entitled to recover for the benefit of the Debtor's estates the transfers made in exchange for the Alleged Agreement from HCMS.

80. Accordingly, the Debtor is entitled to a judgement: (i) avoiding the Alleged Agreement and the transfers thereunder, and (ii) recovering from HCMS an amount equal to all obligations remaining under the Notes.

**FIFTH CLAIM FOR RELIEF**  
**(Against Dugaboy and Ms. Dondero)**  
**(For Declaratory Relief: -- 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001)**

81. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

82. A bona fide, actual, present dispute exists between the Debtor, on the one hand, and Dugaboy and Ms. Dondero on the other hand, concerning whether Dugaboy and/or Ms. Dondero, acting as the Representative, were authorized to enter into the Alleged Agreement on the Debtor's behalf.

83. A judgment declaring the parties' respective rights and obligations will resolve their dispute.

84. Pursuant to Bankruptcy Rule 7001, the Debtor specifically seeks declarations that:

- (a) limited partners, including but not limited to Dugaboy, have no right or authority to take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically provided in the Limited Partnership Agreement,

- (b) neither Dugaboy nor Ms. Dondero (whether individually or as Representative) was authorized under the Limited Partnership Agreement to enter into the Alleged Agreement on behalf of the Partnership,
- (c) neither Dugaboy nor Ms. Dondero (whether individually or as Representative) otherwise had any right or authority to enter into the Alleged Agreement on behalf of the Partnership, and
- (d) the Alleged Agreement is null and void.

**SIXTH CLAIM FOR RELIEF**  
**(Against Dugaboy and Ms. Dondero)**  
**(Breach of Fiduciary Duty)**

85. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

86. If Dugaboy, as a limited partner, or Ms. Dondero, as Representative, had the authority to enter into the Alleged Agreement on behalf of the Debtor, then Dugaboy and/or Ms. Dondero would owe the Debtor a fiduciary duty.

87. If Dugaboy or Ms. Dondero (as Representative) had the authority to enter into the Alleged Agreement on behalf of the Debtor, then Dugaboy and/or Ms. Dondero breached their fiduciary duty of care to the Debtor by entering into and authorizing the purported Alleged Agreement on behalf of the Debtor.

88. Accordingly, the Debtor is entitled to recover from Dugaboy and Ms. Dondero (a) actual damages that the Debtor suffered as a result of their breach of fiduciary duty, and (b) for punitive and exemplary damages.

**SEVENTH CLAIM FOR RELIEF**  
**(Against James Dondero and Nancy Dondero)**  
**(Aiding and Abetting a Breach of Fiduciary Duty)**

89. The Debtor repeats and re-alleges the allegations in each of the foregoing paragraphs as though fully set forth herein.

90. James Dondero and Nancy Dondero (together, the “Donderos”) were aware that Dugaboy would have fiduciary duties to the Debtor if it acted to bind the Debtor.

91. The Donderos aided and abetted Dugaboy’s breach of its fiduciary duties to the Debtor by knowingly participating in the authorization of the purported Alleged Agreement.

92. The Donderos aided and abetted Dugaboy’s breach of its fiduciary duty to the Debtor by knowingly participating in the authorization of the purported Alleged Agreement.

93. Accordingly, the Donderos are jointly and severally liable (a) for the actual damages that the Debtor suffered as a result of aiding and abetting Dondero’s breaches of fiduciary duties, and (b) for punitive and exemplary damages.

WHEREFORE, the Debtor prays for judgment as follows:

(i) On its First Claim for Relief, damages in an amount to be determined at trial but includes (a) the aggregate outstanding principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor’s cost of collection (including all court costs and reasonable attorneys’ fees and expenses);

(ii) On its Second Claim for Relief, ordering turnover by HCMS to the Debtor of an amount equal to (a) the aggregate principal due under each Note, plus (b) all accrued and unpaid interest thereon until the date of payment, plus (c) an amount equal to the Debtor’s cost of collection (including all court costs and reasonable attorneys’ fees and expenses);

(iii) On its Third Claim for Relief, avoidance of the Alleged Agreements and the transfers thereunder pursuant to the Alleged Agreement of funds arising from actual fraudulent transfer under section 548 of the Bankruptcy Code;

(iv) On its Fourth Claim for Relief, avoidance of the Alleged Agreement and the transfers thereunder pursuant to the Alleged Agreement of funds arising from actual fraudulent transfer under Tex. Bus. & C. Code § 24.005(a)(1);

(v) On its Fifth Claim for Relief, a declaration that: (a) limited partners, including but not limited to Dugaboy, have no right or authority to take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically provided in the Limited Partnership Agreement, (b) neither Dugaboy nor Ms. Dondero (whether individually or as Representative) was authorized under the Limited Partnership Agreement to enter into the Alleged Agreement on behalf of the Partnership, (c) neither Dugaboy nor Ms. Dondero (whether individually or as Representative) otherwise had any right or authority to enter into the Alleged Agreement on behalf of the Partnership, and (d) the Alleged Agreement is null and void;

(vi) On its Sixth Claim for Relief, actual damages from Dugaboy and Ms. Dondero, in an amount to be determined at trial, that Debtor suffered as a result of their breach of fiduciary duty, and for punitive and exemplary damages;

(vii) On its Seventh Claim for Relief, actual damages from the Donderos, jointly and severally, in an amount to be determined at trial, that Debtor suffered as a result

of aiding and abetting Dugaboy’s breaches of fiduciary duty, and for punitive and exemplary damages; and

(iii) Such other and further relief as this Court deems just and proper.

Dated: As of July 13, 2021.

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No.143717)  
Ira D. Kharasch (CA Bar No. 109084)  
John A. Morris (NY Bar No. 2405397)  
Gregory V. Demo (NY Bar No. 5371992)  
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hwinograd@pszjlaw.com

-and-

*/s/ Zachery Z. Annable*  
\_\_\_\_\_  
HAYWARD PLLC  
Melissa S. Hayward  
Texas Bar No. 24044908  
MHayward@HaywardFirm.com  
Zachery Z. Annable  
Texas Bar No. 24053075  
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10501 N. Central Expy, Ste. 106  
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Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for Highland Capital Management, L.P.*

# EXHIBIT 1



## PROMISSORY NOTE

\$150,000.00

March 28, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars (\$150,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term “*applicable federal rate*” (2.88 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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HIGHLAND CAPITAL MANAGEMENT  
SERVICES, INC.

## EXHIBIT 2

## PROMISSORY NOTE

\$200,000.00

June 25, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of TWO HUNDRED THOUSAND and 00/100 Dollars (\$200,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term “*applicable federal rate*” (3.05 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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HIGHLAND CAPITAL MANAGEMENT  
SERVICES, INC.

## EXHIBIT 3

## PROMISSORY NOTE

\$400,000

May 29, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of FOUR HUNDRED THOUSAND and 00/100 Dollars (\$400,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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FRANK WATERHOUSE



## EXHIBIT 4

## PROMISSORY NOTE

\$150,000

June 26, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars (\$150,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.37%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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FRANK WATERHOUSE

## EXHIBIT 5

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

December 3, 2020

Highland Capital Management Services, Inc.  
 c/o Highland Capital Management, L.P.  
 300 Crescent Court, Suite 700  
 Dallas, Texas 75201  
 Attention: Frank Waterhouse, CFO

Re: Demand on Promissory Notes:

Dear Mr. Waterhouse,

Highland Capital Management Services, Inc. ("Maker") entered into the following promissory notes (collectively, the "Notes") in favor of Highland Capital Management, L.P. ("Payee"):

<b>Date Issued</b>	<b>Original Principal Amount</b>	<b>Outstanding Principal Amount (12/11/20)</b>	<b>Accrued But Unpaid Interest (12/11/20)</b>	<b>Total Amount Outstanding (12/11/20)</b>
3/28/18	\$150,000	\$158,776.59	\$3,257.32	\$162,033.91
6/25/18	\$200,000	\$212,403.27	\$2,999.54	\$215,402.81
5/29/19	\$400,000	\$409,586.19	\$5,256.62	\$414,842.81
6/26/19	\$150,000	\$153,564.74	\$1,675.16	\$155,239.90
<b>TOTALS</b>	<b>\$900,000</b>	<b>\$934,330.79</b>	<b>\$13,188.64</b>	<b>\$947,519.43</b>

As set forth in Section 2 of each of the Notes, accrued interest and principal is due and payable upon the demand of Payee. By this letter, Payee is demanding payment of the accrued interest and principal due and payable on the Notes in the aggregate amount of \$947,519.43, which represents all accrued and unpaid interest and principal through and including December 11, 2020.

**Payment is due on December 11, 2020, and failure to make payment in full on such date will constitute an event of default under the Notes.**

Payments on the Notes must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Notes or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Notes will continue to accrue until the Notes are paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.  
 Highland Capital Management, L.P.  
 Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso  
James Romey  
Jeffrey Pomerantz  
Ira Kharasch  
Gregory Demo

## Appendix A

ABA #: 322070381  
Bank Name: East West Bank  
Account Name: Highland Capital Management, LP  
Account #: 5500014686

## EXHIBIT 6



## PROMISSORY NOTE

\$20,247,628.02

May 31, 2017

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from Highland Capital Management Services, Inc., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interest represented thereby.

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of TWENTY MILLION, TWO HUNDRED FORTY SEVEN THOUSAND, SIX HUNDRED TWENTY EIGHT AND 02/100 DOLLARS (\$20,247,628.02), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of two and seventy-five hundredths percent (2.75%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31<sup>st</sup> day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No

failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

**MAKER:**

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

By:  \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

**PRIOR NOTES**

<b>Loan Date</b>	<b>Initial Note Amount</b>	<b>Interest Rate</b>	<b>Principal and Interest Outstanding as of May 31, 2017</b>
5/29/15	\$500,000	2.30%	\$523,095
10/1/15	\$350,000	2.58%	\$315,500
10/2/15	\$310,000	2.58%	\$323,301
10/27/15	\$200,000	2.58%	\$208,228
10/28/15	\$200,000	2.58%	\$208,214
10/30/15	\$100,000	2.58%	\$104,093
11/23/15	\$100,000	2.57%	\$103,908
11/24/15	\$250,000	2.57%	\$259,752
2/10/16	\$2,000,000	2.62%	\$ 83,390
2/11/16	\$250,000	2.62%	\$258,524
4/5/16	\$6,000,000	2.25%	\$6,155,712
5/4/16	\$2,700,000	2.24%	\$2,764,954
7/1/16	\$30,000	2.18%	\$30,598
8/5/16	\$525,000	2.18%	\$534,375
8/22/16	\$250,000	2.18%	\$254,465
9/22/16	\$185,000	2.18%	\$187,773
12/12/16	\$7,700,000	2.26%	\$7,781,050
3/31/17	\$150,000	2.78%	\$150,697
	<b>\$21,800,000</b>		<b>\$20,247,628.02</b>

## **EXHIBIT 7**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

January 7, 2021

Highland Capital Management Services, Inc.  
c/o Bonds Ellis Eppich Schafer Jones LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76012  
Attention: James Dondero

Re: Demand on Promissory Note

Dear Mr. Dondero,

On May 31, 2017, Highland Capital Management Services, Inc. entered into that certain promissory note in the original principal amount of \$20,247,628.02 (the "Note") in favor of Highland Capital Management, L.P. ("Payee").

As set forth in Section 2 of the Note, accrued interest and principal on the Note is due and payable in thirty equal annual payments with each payment due on December 31 of each calendar year. Maker failed to make the payment due on December 31, 2020.

Because of Maker's failure to pay, the Note is in default. Pursuant to Section 4 of the Note, all principal, interest, and any other amounts due on the Note are immediately due and payable. The amount due and payable on the Note as of January 8, 2021 is \$6,757,248.95; however, interest continues to accrue under the Note.

**The Note is in default, and payment is due immediately.** Payments on the Note must be made in immediately available funds. Payee's wire information is attached hereto as **Appendix A**.

Nothing contained herein constitutes a waiver of any rights or remedies of Payee under the Note or otherwise and all such rights and remedies, whether at law, equity, contract, or otherwise, are expressly reserved. Interest, including default interest if applicable, on the Note will continue to accrue until the Note is paid in full. Any such interest will remain the obligation of Maker.

Sincerely,

/s/ James P. Seery, Jr.

James P. Seery, Jr.  
Highland Capital Management, L.P.  
Chief Executive Officer/Chief Restructuring Officer

cc: Fred Caruso  
James Romey  
Jeffrey Pomerantz  
Ira Kharasch  
Gregory Demo  
D. Michael Lynn

## Appendix A

ABA #: 322070381  
Bank Name: East West Bank  
Account Name: Highland Capital Management, LP  
Account #: 5500014686

## EXHIBIT 8



**FOURTH AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHLAND CAPITAL MANAGEMENT, L.P.**

THE PARTNERSHIP INTERESTS REPRESENTED BY THIS LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER ANY STATE SECURITIES ACTS IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE PARTNERSHIP INTERESTS IS PROHIBITED UNLESS THAT SALE OR DISPOSITION IS MADE IN COMPLIANCE WITH ALL SUCH APPLICABLE ACTS. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE PARTNERSHIP INTERESTS ARE SET FORTH IN THIS AGREEMENT.

**FOURTH AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHLAND CAPITAL MANAGEMENT, L.P.**

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**FOURTH AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHLAND CAPITAL MANAGEMENT, L.P.**

THIS FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is entered into on this 24<sup>th</sup> day of December, 2015, to be effective as of December 24, 2015, by and among Strand Advisors, Inc., a Delaware corporation ("*Strand*"), as General Partner, the Limited Partners party hereto, and any Person hereinafter admitted as a Limited Partner.

Certain terms used in this Agreement are defined in Article 2.

**ARTICLE 1**

**GENERAL**

**1.1. Continuation.** Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. Except as expressly provided herein, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Delaware Act.

**1.2. Name.** The name of the Partnership shall be, and the business of the Partnership shall be conducted under the name of Highland Capital Management, L.P. The General Partner, in its sole and unfettered discretion, may change the name of the Partnership at any time and from time to time and shall provide Limited Partners with written notice of such name change within twenty (20) days after such name change.

**1.3. Purpose.** The purpose and business of the Partnership shall be the conduct of any business or activity that may lawfully be conducted by a limited partnership organized pursuant to the Delaware Act. Any or all of the foregoing activities may be conducted directly by the Partnership or indirectly through another partnership, joint venture, or other arrangement.

**1.4. Term.** The Partnership was formed as a limited partnership on July 7, 1997, and shall continue until terminated pursuant to this Agreement.

**1.5. Partnership Offices; Addresses of Partners.**

(a) Partnership Offices. The registered office of the Partnership in the State of Delaware shall be 1013 Centre Road, Wilmington, Delaware 19805-1297, and its registered agent for service of process on the Partnership at that registered office shall be Corporation Service Company, or such other registered office or registered agent as the General Partner may from time to time designate. The principal office of the Partnership shall be 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other place as the General Partner may from time to time designate. The Partnership may maintain offices at such other place or places as the General Partner deems advisable.

(b) Addresses of Partners. The address of the General Partner is 300 Crescent Court, Suite 700, Dallas, Texas 75201. The address of each Limited Partner shall be the address of that Limited Partner appearing on the books and records of the Partnership. Each Limited Partner agrees to provide the General Partner with prompt written notice of any change in his/her/its address.

## ARTICLE 2

### DEFINITIONS

**2.1. Definitions.** The following definitions shall apply to the terms used in this Agreement, unless otherwise clearly indicated to the contrary in this Agreement:

*“Additional Capital Contribution”* has the meaning set forth in Section 3.1(b) of this Agreement.

*“Adjusted Capital Account Deficit”* means, with respect to any Partner, the deficit balance, if any, in the Capital Account of that Partner as of the end of the relevant Fiscal Year, or other relevant period, giving effect to all adjustments previously made thereto pursuant to Section 3.7 and further adjusted as follows: (i) credit to that Capital Account, any amounts which that Partner is obligated or deemed obligated to restore pursuant to any provision of this Agreement or pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c); (ii) debit to that Capital Account, the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6); and (iii) to the extent required under the Treasury Regulations, credit to that Capital Account (A) that Partner’s share of “minimum gain” and (B) that Partner’s share of “partner nonrecourse debt minimum gain.” (Each Partner’s share of the minimum gain and partner nonrecourse debt minimum gain shall be determined under Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5), respectively.)

*“Affiliate”* means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person 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 a Person, whether through ownership of voting Securities, by contract or otherwise.

*“Agreement”* means this Fourth Amended and Restated Agreement of Limited Partnership, as it may be amended, supplemented, or restated from time to time.

*“Business Day”* means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States or the State of Texas shall not be regarded as a Business Day.

*“Capital Account”* means the capital account maintained for a Partner pursuant to Section 3.7(a).

*“Capital Contribution”* means, with respect to any Partner, the amount of money or property contributed to the Partnership with respect to the interest in the Partnership held by that Person.

*“Certificate of Limited Partnership”* means the Certificate of Limited Partnership filed with the Secretary of State of Delaware by the General Partner, as that Certificate may be amended, supplemented or restated from time to time.

*“Class A Limited Partners”* means those Partners holding a Class A Limited Partnership Interest, as shown on Exhibit A.

*“Class A Limited Partnership Interest”* means a Partnership Interest held by a Partner in its capacity as a Class A Limited Partner.”

**“Class B Limited Partner”** means those Partners holding a Class B Limited Partnership Interest, as shown on Exhibit A.

**“Class B Limited Partnership Interest”** means a Partnership Interest held by a Partner in its capacity as a Class B Limited Partner.”

**“Class B NAV Ratio Trigger Period”** means any period during which the Class B Limited Partner’s aggregate capital contributions, including the original principal balance of the Contribution Note, and reduced by the aggregate amount of distributions to the Class B Limited Partner, exceed 75 percent of the product of the Class B Limited Partner’s Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class B NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class B NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class B NAV Ratio Trigger Period.

**“Class C Limited Partner”** means those Partners holding a Class C Limited Partnership Interest, as shown on Exhibit A.

**“Class C Limited Partnership Interest”** means a Partnership Interest held by a Partner in its capacity as a Class C Limited Partner.”

**“Class C NAV Ratio Trigger Period”** means any period during which an amount equal to \$93,000,000.00 reduced by the aggregate amount of distributions to the Class C Limited Partner after the Effective Date exceeds 75 percent of the product of the Class C Limited Partner’s Percentage Interest multiplied by the total book value of the Partnership; provided, however, that the General Partner shall only be required to test for a Class C NAV Ratio Trigger Period annually, as of the last day of each calendar year; provided further the General Partner must complete the testing within 180 days of the end of each calendar year; provided further that if the test results in a Class C NAV Ratio Trigger Period, the General Partner may, at its own election, retest at any time to determine the end date of the Class C NAV Ratio Trigger Period.

**“Code”** means the Internal Revenue Code of 1986, as amended and in effect from time to time.

**“Contribution Note”** means that certain Secured Promissory Note dated December 21, 2015 by and among Hunter Mountain Investment Trust, as maker, and the Partnership as Payee.

**“Default Loan”** has the meaning set forth in Section 3.1(c)(i).

**“Defaulting Partner”** has the meaning set forth in Section 3.1(c).

**“Delaware Act”** means the Delaware Revised Uniform Limited Partnership Act, Part IV, Title C, Chapter 17 of the Delaware Corporation Law Annotated, as it may be amended, supplemented or restated from time to time, and any successor to that Act.

**“Effective Date”** means the date first recited above.

**“Fiscal Year”** has the meaning set forth in Section 3.11(b).

“**Founding Partner Group**” means, all partners holding partnership interests in the Partnership immediately before the Effective Date.

“**General Partner**” means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a General Partner pursuant to the terms of this Agreement; and (ii) has not ceased to be a General Partner pursuant to the terms of this Agreement.

“**Limited Partner**” means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a Limited Partner pursuant to the terms of this Agreement, and (ii) has not ceased to be a Limited Partner pursuant to the terms of this Agreement.

“**Liquidator**” has the meaning set forth in Section 5.3.

“**Losses**” means, for each Fiscal Year, the losses and deductions of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership’s method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership’s information tax return filed for federal income tax purposes, plus any expenditures described in Code Section 705(a)(2)(B).

“**Majority Interest**” means the owners of more than fifty percent (50%) of the Percentage Interests of Class A Limited Partners.

“**NAV Ratio Trigger Period**” means a Class B NAV Ratio Trigger Period or a Class C NAV Ratio Trigger Period.

“**Net Increase in Working Capital Accounts**” means the excess of (i) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the end of the period being measured over (ii) Restricted Cash plus Management and Incentive Fees Receivable plus Other Assets plus Deferred Incentive Fees Receivable less Accounts Payable less Accrued and Other Liabilities as of the beginning of the period being measured; provided, however, that amounts within each of the aforementioned categories shall be excluded from the calculation to the extent they are specifically identified as being derived from investing or financing activities. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership and appropriate adjustments may be made to the extent the Partnership adds new ledger accounts to its books and records that are current assets or current liabilities.

“**New Issues**” means Securities that are considered to be “new issues,” as defined in the Conduct Rules of the National Association of Securities Dealers, Inc.

“**Nonrecourse Deduction**” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1), as computed under Treasury Regulations Section 1.704-2(c).

“**Nonrecourse Liability**” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

“**Operating Cash Flow**” means Total Revenue less Total Operating Expenses plus Depreciation & Amortization less Net Increase in Working Capital Accounts year over year. Each of the capitalized terms in this definition shall have the meaning given them in the books and records of the Partnership.

“*Partner*” means a General Partner or a Limited Partner.

“*Partner Nonrecourse Debt*” has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4).

“*Partner Nonrecourse Deductions*” has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2).

“*Partner Nonrecourse Debt Minimum Gain*” has the meaning set forth in Treasury Regulations Section 1.704-2(i)(5).

“*Partnership*” means Highland Capital Management, L.P., the Delaware limited partnership established pursuant to this Agreement.

“*Partnership Capital*” means, as of any relevant date, the net book value of the Partnership’s assets.

“*Partnership Interest*” means the interest acquired by a Partner in the Partnership including, without limitation, that Partner’s right: (a) to an allocable share of the Profits, Losses, deductions, and credits of the Partnership; (b) to a distributive share of the assets of the Partnership; (c) if a Limited Partner, to vote on those matters described in this Agreement; and (d) if the General Partner, to manage and operate the Partnership.

“*Partnership Minimum Gain*” has the meaning set forth in Treasury Regulations Section 1.704-2(d).

“*Percentage Interest*” means the percentage set forth opposite each Partner’s name on Exhibit A as such Exhibit may be amended from time to time in accordance with this Agreement.

“*Person*” means an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

“*Priority Distributions*” has the meaning set forth in Section 3.9(b).

“*Profits*” means, for each Fiscal Year, the income and gains of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership’s method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership’s information tax return filed for federal income tax purposes, plus any income described in Code Section 705(a)(1)(B).

“*Profits Interest Partner*” means any Person who is issued a Partnership Interest that is treated as a “profits interest” for federal income tax purposes.

“*Purchase Notes*” means those certain Secured Promissory Notes of even date herewith by and among Hunter Mountain Investment Trust, as maker, and The Dugaboy Investment Trust, The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #1, and The Mark K. Okada, The Mark and Pamela Okada Family Trust – Exempt Trust #2, each as Payees of the respective Secured Promissory Notes.



“**Record Date**” means the date established by the General Partner for determining the identity of Limited Partners entitled to vote or give consent to Partnership action or entitled to exercise rights in respect of any other lawful action of Limited Partners.

“**Second Amended Buy-Sell and Redemption Agreement**” means that certain Second Amended and Restated Buy-Sell and Redemption Agreement, dated December 21, 2015, to be effective as of December 21, 2015 by and between the Partnership and its Partners, as may be amended, supplemented, or restated from time to time.

“**Securities**” means the following: (i) securities of any kind (including, without limitation, “securities” as that term is defined in Section 2(a)(1) of the Securities Act; (ii) commodities of any kind (as that term is defined by the U.S. Securities Laws and the rules and regulations promulgated thereunder); (iii) any contracts for future or forward delivery of any security, commodity or currency; (iv) any contracts based on any securities or group of securities, commodities or currencies; (v) any options on any contracts referred to in clauses (iii) or (iv); or (vi) any evidences of indebtedness (including participations in or assignments of bank loans or trade credit claims). The items set forth in clauses (i) through (vi) herein include, but are not limited to, capital stock, common stock, preferred stock, convertible securities, reorganization certificates, subscriptions, warrants, rights, options, puts, calls, bonds, mutual fund interests, debentures, notes, certificates of deposit, letters of credit, bankers acceptances, trust receipts and other securities of any corporation or other entity, whether readily marketable or not, rights and options, whether granted or written by the Partnership or by others, treasury bills, bonds and notes, any securities or obligations issued or guaranteed by the United States or any foreign country or any state or possession of the United States or any foreign country or any political subdivision or agency or instrumentality of any of the foregoing, and derivatives of any of the foregoing.

“**Securities Act**” means the Securities Act of 1933, as amended, and any successor to such statute.

“**Substitute Limited Partner**” has the meaning set forth in Section 4.6(a).

“**Transfer**” or derivations thereof, of a Partnership Interest means, as a noun, the transfer, sale, assignment, exchange, pledge, hypothecation or other disposition of a Partnership Interest, or any part thereof, directly or indirectly, and as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate or otherwise dispose of.

“**Treasury Regulations**” means the Department of Treasury Regulations promulgated under the Code, as amended and in effect (including corresponding provisions of succeeding regulations).

**2.2. Other Definitions.** All terms used in this Agreement that are not defined in this Article 2 have the meanings contained elsewhere in this Agreement.

## ARTICLE 3

### FINANCIAL MATTERS

#### 3.1. Capital Contributions.

(a) Initial Capital Contributions. The initial Capital Contribution of each Partner shall be set forth in the books and records of the Partnership.

(b) Additional Capital Contributions.

(i) The General Partner, in its reasonable discretion and for a *bona fide* business purpose, may request in writing that the Founding Partner Group make additional Capital Contributions in proportion to their Percentage Interests (each, an “*Additional Capital Contribution*”).

(ii) Any failure by a Partner to make an Additional Capital Contribution requested under Section 3.1(b)(i) on or before the date on which that Additional Capital Contribution was due shall result in the Partner being in default.

(c) Consequences to Defaulting Partners. In the event a Partner is in default under Section 3.1(b) (a “*Defaulting Partner*”), the Defaulting Partner, in its sole and unfettered discretion, may elect to take either one of the option set forth below.

(i) Default Loans. If the Defaulting Partner so elects, the General Partner shall make a loan to the Defaulting Partner in an amount equal to that Defaulting Partner’s additional capital contribution (a “*Default Loan*”). A Default Loan shall be deemed advanced on the date actually advanced. Default Loans shall earn interest on the outstanding principal amount thereof at a rate equal to the Applicable Federal Mid-Term Rate (determined by the Internal Revenue Service for the month in which the loan is deemed made) from the date actually advanced until the same is repaid in full. The term of any Default Loan shall be six (6) months, unless otherwise extended by the General Partner in its sole and unfettered discretion. If the General Partner makes a Default Loan, the Defaulting Partner shall not receive any distributions pursuant to Section 3.9(a) or Section 5.3 or any proceeds from the Transfer of all or any part of its Partnership Interest while the Default Loan remains unpaid. Instead, the Defaulting Partner’s share of distributions or such other proceeds shall (until all Default Loans and interest thereon shall have been repaid in full) first be paid to the General Partner. Such payments shall be applied first to the payment of interest on such Default Loans and then to the repayment of the principal amounts thereof, but shall be considered, for all other purposes of this Agreement, to have been distributed to the Defaulting Partner. The Defaulting Partner shall be liable for the reasonable fees and expenses incurred by the General Partner (including, without limitation, reasonable attorneys’ fees and disbursements) in connection with any enforcement or foreclosure upon any Default Loan and such costs shall, to the extent enforceable under applicable law, be added to the principal amount of the applicable Default Loan. In addition, at any time during the term of such Default Loan, the Defaulting Partner shall have the right to repay, in full, the Default Loan (including interest and any other charges). If the General Partner makes a Default Loan, the Defaulting Partner shall be deemed to have pledged to the General Partner and granted to the General Partner a continuing first priority security interest in, all of the Defaulting Partner’s Partnership Interest to secure the payment of the principal of, and interest on, such Default Loan in accordance with the provisions hereof, and for such purpose this Agreement shall constitute a security agreement. The Defaulting Partner shall promptly execute, acknowledge and deliver such financing statements, continuation statements or other documents and take such other actions as the General Partner shall request in writing in order to perfect or continue the perfection of such security interest; and, if the Defaulting Partner shall fail to do so within seven (7) days after the Defaulting Partner’s receipt of a notice making demand therefor, the General Partner is hereby appointed the attorney-in-fact of, and is hereby authorized on behalf of, the Defaulting Partner, to execute, acknowledge and deliver all such documents and take all such other actions as may be required to perfect such security interest. Such appointment and authorization are coupled with an interest and shall be irrevocable. The General Partner shall, prior to exercising any right or remedy (whether at law, in equity or pursuant to the terms hereof) available to it in connection with such security interest, provide to the Defaulting Partner a notice, in reasonable detail, of the right or remedy to be exercised and the intended timing of such exercise which shall not be less than five (5) days following the date of such notice.

(ii) Reduction of Percentage Interest. If the Defaulting Partner does not elect to obtain a Default Loan pursuant to Section 3.1(c)(i), the General Partner shall reduce the Defaulting Partner's Percentage Interest in accordance with the following formula:

The Defaulting Partner's new Percentage Interest shall equal the product of (1) the Defaulting Partner's current Percentage Interest, multiplied by (2) the quotient of (a) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), divided by (b) the sum of (i) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), plus (ii) the amount of the additional capital contribution that such Defaulting Partner failed to make when due.

To the extent any downward adjustment is made to the Percentage Interest of a Partner pursuant to this Section 3.1(c)(ii), any resulting benefit shall accrue to the Partners (other than the Defaulting Partner) in proportion to their respective Percentage Interests.

### **3.2. Allocations of Profits and Losses.**

(a) Allocations of Profits. Except as provided in Sections 3.4, 3.5, and 3.6, Profits for any Fiscal Year will be allocated to the Partners as follows:

(i) First, to the Partners until cumulative Profits allocated under this Section 3.2(a)(i) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(iii) for all prior periods in the inverse order in which such Losses were allocated; and

(ii) Next, to the Partners until cumulative Profits allocated under this Section 3.2(a)(ii) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(ii) for all prior periods in the inverse order in which such Losses were allocated; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(b) Allocations of Losses. Except as provided in Sections 3.4, 3.5, and 3.6, Losses for any Fiscal Year will be will be allocated as follows:

(i) First, to the Partners until cumulative Losses allocated under this Section 3.2(b)(i) for all prior periods equal the cumulative Profits allocated to the Partners under Section 3.2(a)(iii) for all prior periods in the inverse order in which such Profits were allocated; and

(ii) Next, to the Partners in proportion to their respective positive Capital Account balances until the aggregate Capital Account balances of the Partners (excluding any negative Capital Account balances) equal zero; *provided, however*, losses shall first be allocated to reduce amounts that were last allocated to the Capital Accounts of the Partners; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(c) Limitation on Loss Allocations. If any allocation of Losses would cause a Limited Partner to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the General Partner.

**3.3. Allocations on Transfers.** Taxable items of the Partnership attributable to a Partnership Interest that has been Transferred (including the simultaneous decrease in the Partnership Interest of existing Partners resulting from the admission of a new Partner) shall be allocated in accordance with Section 4.3(d).

**3.4. Special Allocations.** If the requisite stated conditions or facts are present, the following special allocations shall be made in the following order:

(a) Partnership Minimum Gain Chargeback. Notwithstanding any other provision of this Article 3, if there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement, each Partner shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(a) is intended to comply with the partnership minimum gain chargeback requirements of the Treasury Regulations and shall be subject to all exceptions provided therein.

(b) Partner Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Article 3 (other than Section 3.4(a)), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable year or other period for which allocations are made, any Partner with a share of such Partner Nonrecourse Debt Minimum Gain as of the beginning of the year shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in an amount equal to that Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirements of the Treasury Regulations, shall be interpreted consistently with the Treasury Regulations and shall be subject to all exceptions provided therein.

(c) Qualified Income Offset. If a Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), then items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible; *provided, however*, an allocation pursuant to this Section 3.4(c) shall be made if and only to the extent that the Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made without considering this Section 3.4(c).

(d) Gross Income Allocation. If a Partner has a deficit Capital Account at the end of any Fiscal Year of the Partnership that exceeds the sum of (i) the amount the Partner is obligated to restore, and (ii) the amount the Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), then each such Partner shall be specially allocated items of income and gain of the Partnership in the amount of the excess as quickly as possible; *provided, however*, an allocation pursuant to this Section 3.4(d) shall be made if and only to

the extent that the Partner would have a deficit Capital Account in excess of that sum after all other allocations provided for in this Article 3 have been tentatively made without considering Section 3.4(c) or 3.4(d).

(e) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made shall be allocated among the Partners in accordance with their Percentage interests.

(f) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset of the Partnership under Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and that gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Treasury Regulations.

(h) Section 481 Adjustments. Any allocable items of income, gain, expense, deduction or credit required to be made by Section 481 of the Code as the result of the sale, transfer, exchange or issuance of a Partnership Interest will be specially allocated to the Partner receiving said Partnership Interest whether such items are positive or negative in amount.

**3.5. Curative Allocations.** The “*Basic Regulatory Allocations*” consist of (i) the allocations pursuant to Section 3.2(c), and (ii) the allocations pursuant to Sections 3.4. Notwithstanding any other provision of this Agreement, the Basic Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Partners so that, to the extent possible, the net amount of the allocations of other items and the Basic Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 3.5 shall be made with respect to allocations pursuant to Section 3.4 (g) and (h) only to the extent that it is reasonably determined that those allocations will otherwise be inconsistent with the economic agreement among the Partners. To the extent that a special allocation under Section 3.4 is determined not to comply with applicable Treasury Regulations, then the Partners intend that the items shall be allocated in accordance with the Partners’ varying Percentage Interests throughout each tax year during which such items are recognized for tax purposes.

**3.6. Code Section 704(c) Allocations.** In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation at the time of the contribution between the tax basis of the property to the Partnership and the fair market value of that property. Except as otherwise provided herein, any elections or other decisions relating to those allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations of income, gain, loss and deduction pursuant to this Section 3.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, the Capital Account of any Partner or the share

of Profits, Losses, other tax items or distributions of any Partner pursuant to any provision of this Agreement.

### 3.7. Capital Accounts.

(a) Maintenance of Capital Accounts. The Partnership shall establish and maintain a separate capital account ("Capital Account") for each Partner in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv), subject to and in accordance with the provisions set forth in this Section 3.7.

(i) The Capital Account balance of each Partner shall be credited (increased) by (A) the amount of cash contributed by that Partner to the capital of the Partnership, (B) the fair market value of property contributed by that Partner to the capital of the Partnership (net of liabilities secured by that contributed property that the Partnership assumes or takes subject to under Code Section 752), and (C) that Partner's allocable share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Sections 3.4 and 3.5; and

(ii) The Capital Account balance of each Partner shall be debited (decreased) by (A) the amount of cash distributed to that Partner by the Partnership, (B) the fair market value of property distributed to that Partner by the Partnership (net of liabilities secured by that distributed property that such Partner assumes or takes subject to under Code Section 752), (C) that Partner's allocable share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (D) that Partner's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Sections 3.2, 3.4 and 3.5.

The provisions of this Section 3.7 and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions. The General Partner may modify the manner in which the Capital Accounts are maintained under this Section 3.7 in order to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions.

(b) Negative Capital Accounts. If any Partner has a deficit balance in its Capital Account, that Partner shall have no obligation to restore that negative balance or to make any Capital Contribution by reason thereof, and that negative balance shall not be considered an asset of the Partnership or of any Partner.

(c) Interest. No interest shall be paid by the Partnership on Capital Contributions or on balances in Capital Accounts.

(d) No Withdrawal. No Partner shall be entitled to withdraw any part of his/her/its Capital Contribution or his/her/its Capital Account or to receive any distribution from the Partnership, except as provided in Section 3.9 and Article 5.

(e) Loans From Partners. Loans by a Partner to the Partnership shall not be considered Capital Contributions.

(f) Revaluations. The Capital Accounts of the Partners shall not be "booked-up" or "booked-down" to their fair market values under Treasury Regulations Section 1.704(c)-1(b)(2)(iv)(f) or otherwise.

**3.8. Distributive Share for Tax Purpose.** All items of income, deduction, gain, loss or credit that are recognized for federal income tax purposes will be allocated among the Partners in accordance with the allocations of Profits and Losses hereunder as determined by the General Partner in its sole and unfettered discretion. Notwithstanding the foregoing, the General Partner may (i) as to each New Issue, specially allocate to the Partners who were allocated New Issue Profit from that New Issue any short-term capital gains realized during the Fiscal Year upon the disposition of such New Issue during that Fiscal Year, and (ii) specially allocate items of gain (or loss) to Partners who withdraw capital during any Fiscal Year in a manner designed to ensure that each withdrawing Partner is allocated gain (or loss) in an amount equal to the difference between that Partner's Capital Account balance (or portion thereof being withdrawn) at the time of the withdrawal and the tax basis for his/her/ its Partnership Interest at that time (or proportionate amount thereof); *provided, however*, that the General Partner may, without the consent of any other Partner, (a) alter the allocation of any item of taxable income, gain, loss, deduction or credit in any specific instance where the General Partner, in its sole and unfettered discretion, determines such alteration to be necessary or appropriate to avoid a materially inequitable result (*e.g.*, where the allocation would create an inappropriate tax liability); and/or (b) adopt whatever other method of allocating tax items as the General Partner determines is necessary or appropriate in order to be consistent with the spirit and intent of the Treasury Regulations under Code Sections 704(b) and 704(c).

**3.9. Distributions.**

(a) General. The General Partner may make such pro rata or non-pro rata distributions as it may determine in its sole and unfettered discretion, without being limited to current or accumulated income or gains, but no such distribution shall be made out of funds required to make current payments on Partnership indebtedness; provided, however, that the General Partner may not make non-pro rata distributions under this Section 3.9(a) during an NAV Ratio Trigger Period without the consent of the Class B Limited Partner (in the case of a Class B NAV Ratio Trigger Period) and/or the Class C Limited Partner (in the case of a Class C NAV Ratio Trigger Period); provided, further this provision should not be interpreted to limit in any way the General Partner's ability to make non-pro rata tax distributions under Section 3.9(c) and Section 3.9(f). The Partnership has entered into one or more credit facilities with financial institutions that may limit the amount and timing of distributions to the Partners. Thus, the Partners acknowledge that distributions from the Partnership may be limited. Any distributions made to the Class B Limited Partner or the Class C Limited Partner pursuant to Section 3.9(b) shall reduce distributions otherwise allocable to such Partners under this Section 3.9(a) until such aggregate reductions are equal to the aggregate distributions made to the Class B Partners and the Class C Partners under Section 3.9(b).

(b) Priority Distributions. Prior to the distribution of any amounts to Partners pursuant to Section 3.9(a), and notwithstanding any other provision in this Agreement to the contrary, the Partnership shall make the following distributions ("**Priority Distributions**") pro-rata among the Class B Limited Partner and the Class C Limited Partner in accordance with their relative Percentage Interests:

(i) No later than March 31<sup>st</sup> of each calendar year, commencing March 31, 2017, an amount equal to \$1,600,000.00;

(ii) No later than March 31<sup>st</sup> of each year, commencing March 31, 2017, an amount equal to three percent (3%) of the Partnership's investment gain for the prior year, as reflected in the Partnership's books and records within ledger account number 90100 plus three percent (3%) of the gross realized investment gains for the prior year of Highland Select Equity Fund, as reflected in its books and records;

(iii) No later than March 31<sup>st</sup> of each year, commencing March 31, 2017, an amount equal to ten percent (10%) of the Partnership's Operating Cash Flow for the prior year; and

(iv) No later than December 24<sup>th</sup> of each year, commencing December 24, 2016, an amount equal to the aggregate annual principal and interest payments on the Purchase Notes for the then current year.

(c) Tax Distributions. The General Partner may, in its sole discretion, declare and make cash distributions pursuant hereto to the Partners to allow the federal and state income tax attributable to the Partnership's taxable income that is passed through the Partnership to the Partners to be paid by such Partners (a "**Tax Distribution**"). The General Partner may, in its discretion, make Tax Distributions to the Founding Partner Group without also making Tax Distributions to other Partners; provided, however, that if the General Partner makes Tax Distributions to the Founding Partner Group, Tax Distributions must also be made the Class B Limited Partner to the extent the Class B Limited Partner provides the Partnership with documentation showing it is subject to an entity-level federal income tax obligation. Notwithstanding anything else in this Agreement, the General Partner may declare and pay Tax Distributions even if such Tax Distributions cause the Partnership to be unable to make Priority Distributions under Section 3.9(b).

(d) Payments Not Deemed Distributions. Any amounts paid pursuant to Sections 4.1(e) or 4.1(h) shall not be deemed to be distributions for purposes of this Agreement.

(e) Withheld Amounts. Notwithstanding any other provision of this Section 3.9 to the contrary, each Partner hereby authorizes the Partnership to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Partnership with respect to that Partner as a result of that Partner's participation in the Partnership. If and to the extent that the Partnership shall be required to withhold or pay any such taxes, that Partner shall be deemed for all purposes of this Agreement to have received a payment from the Partnership as of the time that withholding or tax is paid, which payment shall be deemed to be a distribution with respect to that Partner's Partnership Interest to the extent that the Partner (or any successor to that Partner's Partnership Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Partner for any period exceeds the distributions to which that Partner is entitled for that period, the amount of such excess shall be considered a loan from the Partnership to that Partner. Such loan shall bear interest (which interest shall be treated as an item of income to the Partnership) at the "Applicable Federal Rate" (as defined in the Code), as determined hereunder from time to time, until discharged by that Partner by repayment, which may be made in the sole and unfettered discretion of the General Partner out of distributions to which that Partner would otherwise be subsequently entitled. Any withholdings authorized by this Section 3.9(d) shall be made at the maximum applicable statutory rate under the applicable tax law unless the General Partner shall have received an opinion of counsel or other evidence satisfactory to the General Partner to the effect that a lower rate is applicable, or that no withholding is applicable.

(f) Special Tax Distributions. The Partnership shall, upon request of such Founding Partner, make distributions to the Founding Partners (or loans, at the election of the General Partner) in an amount necessary for each of them to pay their respective federal income tax obligations incurred through the effective date of the Third Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., the predecessor to this Agreement.

(g) Tolling of Priority Distributions. In the event of a "Honis Trigger Event," as defined in the Second Amended Buy-Sell and Redemption Agreement, the Partnership shall not make any distributions, including priority distributions under Section 3.9(b), to the Class B Limited Partner or the Class C Limited Partner until such time as a replacement trust administrator, manager and general partner,



as applicable, acceptable to the Partnership in its sole discretion, as indicated by an affirmative vote of consent by a Majority Interest, shall be appointed to the Class B Limited Partner/Class C Limited Partner and any of its direct or indirect owners that have governing documents directly affected by a Honis Trigger Event.

### **3.10. Compensation and Reimbursement of General Partner.**

(a) 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 no compensation above five million dollars per year may be approved, even by a Majority Interest, during a NAV Ratio Trigger Period.

(b) Reimbursement for Expenses. In addition to amounts paid under other Sections of this Agreement, the General Partner and its Affiliates shall be reimbursed for all expenses, disbursements, and advances incurred or made, and all fees, deposits, and other sums paid in connection with the organization and operation of the Partnership, the qualification of the Partnership to do business, and all related matters.

### **3.11. Books, Records, Accounting, and Reports.**

(a) Records and Accounting. The General Partner shall keep or cause to be kept appropriate books and records with respect to the Partnership's business, which shall at all times be kept at the principal office of the Partnership or such other office as the General Partner may designate for such purpose. The books of the Partnership shall be maintained for financial reporting purposes on the accrual basis or on a cash basis, as the General Partner shall determine in its sole and unfettered discretion, in accordance with generally accepted accounting principles and applicable law. Upon reasonable request, the Class B Limited Partner or the Class C Limited Partner may inspect the books and records of the Partnership.

(b) Fiscal Year. The fiscal year of the Partnership shall be the calendar year unless otherwise determined by the General Partner in its sole and unfettered discretion.

(c) Other Information. The General Partner may release information concerning the operations of the Partnership to any financial institution or other Person that has loaned or may loan funds to the Partnership or the General Partner or any of its Affiliates, and may release such information to any other Person for reasons reasonably related to the business and operations of the Partnership or as required by law or regulation of any regulatory body.

(d) Distribution Reporting to Class B Limited Partner and Class C Limited Partner. Upon request, the Partnership shall provide the Class B Limited Partner and/or the Class C Limited Partner information on any non-pro rata distributions made under Section 3.9 to Partners other than the Partner requesting the information.

### **3.12. Tax Matters.**

(a) Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gain, loss, deduction, credit and other items necessary for federal, state and local income tax purposes. The General Partner shall deliver to each Partner as copy of his/her/its IRS Form K-1 as soon as practicable after the end of the Fiscal Year, but in no event later than October 1. The classification, realization, and recognition of income, gain, loss, deduction, credit and

other items shall be on the cash or accrual method of accounting for federal income tax purposes, as the General Partner shall determine in its sole and unfettered discretion. The General Partner in its sole and unfettered discretion may pay state and local income taxes attributable to operations of the Partnership and treat such taxes as an expense of the Partnership.

(b) Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and unfettered discretion, determine whether to make any available tax election.

(c) Tax Controversies. Subject to the provisions hereof, the General Partner is designated the Tax Matters Partner (as defined in Code Section 6231), and is authorized and required to represent the Partnership, at the Partnership's expense, in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner in connection with such proceedings.

(d) Taxation as a Partnership. No election shall be made by the Partnership or any Partner for the Partnership to be excluded from the application of any of the provisions of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.

## ARTICLE 4

### RIGHTS AND OBLIGATIONS OF PARTNERS

**4.1. Rights and Obligations of the General Partner.** In addition to the rights and obligations set forth elsewhere in this Agreement, the General Partner shall have the following rights and obligations:

(a) Management. The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and Limited Partners shall have no right of control over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any provision of this Agreement, the General Partner shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, including, without limitation: (i) the determination of the activities in which the Partnership will participate; (ii) the performance of any and all acts necessary or appropriate to the operation of any business of the Partnership (including, without limitation, purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables and any other obligations); (iii) the procuring and maintaining of such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Partner; (iv) the acquisition, disposition, sale, mortgage, pledge, encumbrance, hypothecation, of exchange of any or all of the assets of the Partnership; (v) the execution and delivery on behalf of, and in the name of the Partnership, deeds, deeds of trust, notes, leases, subleases, mortgages, bills of sale and any and all other contracts or instruments necessary or incidental to the conduct of the Partnership's business; (vi) the making of any expenditures, the borrowing of money, the guaranteeing of indebtedness and other liabilities, the issuance of evidences of indebtedness, and the incurrence of any obligations it deems necessary or advisable for the conduct of the activities of the Partnership, including, without limitation, the payment of compensation and reimbursement to the General Partner and its Affiliates pursuant to Section 3.10; (vii) the use of the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms it sees fit, including, without limitation, the financing of operations of the Partnership, the lending of funds to other Persons, and the repayment of obligations

of the Partnership; (viii) the negotiation, execution, and performance of any contracts that it considers desirable, useful, or necessary to the conduct of the business or operations of the Partnership or the implementation of the General Partner's powers under this Agreement; (ix) the distribution of Partnership cash or other assets; (x) the selection, hiring and dismissal of employees, attorneys, accountants, consultants, contractors, agents and representatives and the determination of their compensation and other terms of employment or hiring; (xi) the formation of any further limited or general partnerships, joint ventures, or other relationships that it deems desirable and the contribution to such partnerships, ventures, or relationships of assets and properties of the Partnership; and (xii) the control of any matters affecting the rights and obligations of the Partnership, including, without limitation, the conduct of any litigation, the incurring of legal expenses, and the settlement of claims and suits.

(b) Certificate of Limited Partnership. The General Partner caused the Certificate of Limited Partnership of the Partnership to be filed with the Secretary of State of Delaware as required by the Delaware Act and shall cause to be filed such other certificates or documents (including, without limitation, copies, amendments, or restatements of this Agreement) as may be determined by the General Partner to be reasonable and necessary or appropriate for the formation, qualification, or registration and operation of a limited partnership (or a partnership in which Limited Partners have limited liability) in the State of Delaware and in any other state where the Partnership may elect to do business.

(c) Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser or other Person, including any purchaser of property from the Partnership or any other Person dealing with the Partnership, shall be required to verify any representation by the General Partner as to its authority to encumber, sell, or otherwise use any assets or properties of the Partnership, and any such lender, purchaser, or other Person shall be entitled to rely exclusively on such representations and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against any such lender, purchaser, or other Person to contest, negate, or disaffirm any action of the General Partner in connection with any such sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, and each such Person shall be entitled to rely on the assumptions that the Partnership has been duly formed and is validly in existence. In no event shall any such Person be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative, and every contract, agreement, deed, mortgage, security agreement, promissory note, or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i), at the time of the execution and delivery thereof, this Agreement was in full force and effect; (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership; and (iii) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

(d) Partnership Funds. The funds of the Partnership shall be deposited in such account or accounts as are designated by the General Partner. The General Partner may, in its sole and unfettered discretion, deposit funds of the Partnership in a central disbursing account maintained by or in the name of the General Partner, the Partnership, or any other Person into which funds of the General Partner, the Partnership, or other Persons are also deposited; *provided, however*, at all times books of account are maintained that show the amount of funds of the Partnership on deposit in such account and interest accrued with respect to such funds as credited to the Partnership. The General Partner may use the funds of the Partnership as compensating balances for its benefit; *provided, however*, such funds do

not directly or indirectly secure, and are not otherwise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, employee, agent, representative, or Affiliate thereof. Nothing in this Section 4.1(d) shall be deemed to prohibit or limit in any manner the right of the Partnership to lend funds to the General Partner or any Affiliate thereof pursuant to Section 4.1(e)(i). All withdrawals from or charges against such accounts shall be made by the General Partner or by its representatives. Funds of the Partnership may be invested as determined by the General Partner in accordance with the terms and provisions of this Agreement.

(e) Loans to or from General Partner; Contracts with Affiliates; Joint Ventures.

(i) The General Partner or any Affiliate of the General Partner may lend to the Partnership funds needed by the Partnership for such periods of time as the General Partner may determine; *provided, however*, the General Partner or its Affiliate may not charge the Partnership interest at a rate greater than the rate (including points or other financing charges or fees) that would be charged the Partnership (without reference to the General Partner's financial abilities or guaranties) by unrelated lenders on comparable loans. The Partnership shall reimburse the General Partner or its Affiliate, as the case may be, for any costs incurred by the General Partner or that Affiliate in connection with the borrowing of funds obtained by the General Partner or that Affiliate and loaned to the Partnership. The Partnership may loan funds to the General Partner and any member of the Founding Partner Group at the General Partner's sole and exclusive discretion.

(ii) The General Partner or any of its Affiliates may enter into an agreement with the Partnership to render services, including management services, for the Partnership. Any service rendered for the Partnership by the General Partner or any Affiliate thereof shall be on terms that are fair and reasonable to the Partnership.

(iii) The Partnership may Transfer any assets to joint ventures or other partnerships in which it is or thereby becomes a participant upon terms and subject to such conditions consistent with applicable law as the General Partner deems appropriate; provided, however, that the Partnership may not transfer any asset to the General Partner or one of its Affiliates during any NAV Ratio Trigger Period for consideration less than such asset's fair market value.

(f) Outside Activities' Conflicts of Interest. The General Partner or any Affiliate thereof and any director, officer, employee, agent, or representative of the General Partner or any Affiliate thereof shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement or the partnership relationship created hereby in any business ventures of the General Partner, any Affiliate thereof, or any director, officer, employee, agent, or representative of either the General Partner or any Affiliate thereof.

(g) Resolution of Conflicts of Interest. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation.

(h) Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer, employee, agent, or representative of the General Partner (collectively,

the “*GP Party*”), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership’s business, including, without limitation, attorneys’ fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however*, the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct. The Partnership, in the sole and unfettered discretion of the General Partner, may indemnify and hold harmless any Limited Partner, employee, agent, or representative of the Partnership, any Person who is or was serving at the request of the Partnership acting through the General Partner as a director, officer, partner, trustee, employee, agent, or representative of another corporation, partnership, joint venture, trust, or other enterprise, and any other Person to the extent determined by the General Partner in its sole and unfettered discretion, but in no event shall such indemnification exceed the indemnification permitted by the Delaware Act. Notwithstanding anything to the contrary in this Section 4.1(h) or elsewhere in this Agreement, no amendment to the Delaware Act after the date of this Agreement shall reduce or limit in any manner the indemnification provided for or permitted by this Section 4.1(h) unless such reduction or limitation is mandated by such amendment for limited partnerships formed prior to the enactment of such amendment. In no event shall Limited Partners be subject to personal liability by reason of the indemnification provisions of this Agreement.

(i) Liability of General Partner.

(i) Neither the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct.

(ii) The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its directors, officers, employees, agents, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(j) Reliance by General Partner.

(i) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(ii) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisers selected by it, and any opinion of any such Person as to matters which the General Partner believes to be within such Person’s professional or expert competence shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(k) The General Partner may, from time to time, designate one or more Persons to be officers of the Partnership. No officer need be a Partner. Any officers so designated shall have such authority and perform such duties as the General Partner may, from time to time, delegate to them. The General Partner may assign titles to particular officers, including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer. Each officer shall hold office until such Person's successor shall be duly designated and shall qualify or until such Person's death or

until such Person shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Partnership shall be fixed from time to time by the General Partner. Any officer may be removed as such, either with or without cause, by the General Partner whenever in the General Partner's judgment the best interests of the Partnership will be served thereby. Any vacancy occurring in any office of the Partnership may be filled by the General Partner.

**4.2. Rights and Obligations of Limited Partners.** In addition to the rights and obligations of Limited Partners set forth elsewhere in this Agreement, Limited Partners shall have the following rights and obligations:

(a) Limitation of Liability. Limited Partners shall have no liability under this Agreement except as provided herein or under the Delaware Act.

(b) Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

(c) Return of Capital. No Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement.

(d) Second Amended Buy-Sell and Redemption Agreement. Each Limited Partner shall comply with the terms and conditions of the Second Amended Buy-Sell and Redemption Agreement.

(e) Default on Priority Distributions. If the Partnership fails to timely pay Priority Distributions pursuant to Section 3.9(b), and the Partnership does not subsequently make such Priority Distribution within ninety days of its due date, the Class B Limited Partner or the Class C Limited Partner may require the Partnership to liquidate publicly traded securities held by the Partnership or Highland Select Equity Master Fund, L.P., a Delaware limited partnership controlled by the Partnership; provided, however, that the General Partner may in its sole discretion elect instead to liquidate other non-publicly traded securities owned by the Partnership in order to satisfy the Partnership's obligations under Section 3.9(b) and this Section 4.2(e). In either case, Affiliates of the General Partner shall have the right of first offer to purchase any securities liquidated under this Section 4.2(e).

**4.3. Transfer of Partnership Interests.**

(a) Transfer. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement. Any Transfer or purported Transfer of any Partnership Interest not made in accordance with this Section 4.3 and the Second Amended Buy-Sell and Redemption Agreement shall be null and void. An alleged transferee shall have no right to require any information or account of the Partnership's transactions or to inspect the Partnership's books. The Partnership shall be entitled to treat the alleged transferor of a Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability to any alleged transferee for distributions to the Partner owning that Partnership Interest of record or for allocations of Profits, Losses, deductions or credits or for transmittal of reports and notices required to be given to holders of Partnership Interests.

(b) Transfers by General Partner. The General Partner may Transfer all, but not less than all, of its Partnership Interest to any Person only with the approval of a Majority Interest; provided, however, that the General Partner may not Transfer its Partnership Interest during any NAV Ratio Trigger Period except to the extent such Transfers are for estate planning purposes or resulting from the death of the individual owner of the General Partner. Any Transfer by the General Partner of its Partnership Interest under this Section 4.3(b) to an Affiliate of the General Partner or any other Person shall not constitute a withdrawal of the General Partner under Section 4.5(a), Section 5.1(b), or any other provision of this Agreement. If any such Transfer is deemed to constitute a withdrawal under such provisions or otherwise and results in the dissolution of the Partnership under this Agreement or the laws of any jurisdiction to which the Partnership of this Agreement is subject, the Partners hereby unanimously consent to the reconstitution and continuation of the Partnership immediately following such dissolution, pursuant to Section 5.2.

(c) Transfers by Limited Partners. The Partnership Interest of a Limited Partner may not be Transferred without the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), and in accordance with the Second Amended Buy-Sell and Redemption Agreement.

(d) Distributions and Allocations in Respect of Transferred Partnership Interests. If any Partnership Interest is Transferred during any Fiscal Year in compliance with the provisions of Article 4 and the Second Amended Buy-Sell and Redemption Agreement, Profits, Losses, and all other items attributable to the transferred interest for that period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the General Partner; provided that no allocations shall be made under this Section 4.3(d) that would affect any special allocations made under Section 3.4. All distributions declared on or before the date of that Transfer shall be made to the transferor. Solely for purposes of making such allocations and distributions, the Partnership shall recognize that Transfer not later than the end of the calendar month during which it is given notice of that Transfer; *provided, however*, if the Partnership does not receive a notice stating the date that Partnership Interest was Transferred and such other information as the General Partner may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the person who, according to the books and records of the Partnership, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Partnership Interest. Neither the Partnership nor any Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 4.3(d), whether or not any Partner or the Partnership has knowledge of any Transfer of ownership of any Partnership Interest.

(e) Forfeiture of Partnership Interests Pursuant to the Contribution Note. In the event any Class B Limited Partnership Interests are forfeited in favor of the Partnership as a result of any default on the Contribution Note, the Capital Accounts and Percentage Interests associated with such Class B Limited Partnership Interests shall be allocated pro rata among the Class A Partners. The Priority Distributions in Section 3.9(b) made after the date of such forfeiture shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the Class B Limited Partnership Interest transferred pursuant to this Section 4.3(e) over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any forfeiture of such Class B Limited Partnership Interest.

(f) Transfers of Partnership Interests Pursuant to the Purchase Notes. Notwithstanding any other provision in this Agreement, the Partnership shall respect, and the General Partner hereby provides automatic consent for, any transfers (in whole or transfers of partial interests) of

the Class C Limited Partnership Interests, or a portion thereof, if such transfer occurs as a result of a default on the Purchase Notes. Upon the transfer of any Class C Limited Partnership Interest to any member of the Founding Partner Group (or their assigns), such Class C Limited Partnership Interest shall automatically convert to a Class A Partnership Interest. The Priority Distributions in Section 3.9(b) shall each be reduced by an amount equal to the ratio of the Percentage Interest associated with the transferred Class C Limited Partnership Interest over the aggregate Percentage Interests of all Class B Limited Partnership Interests and Class C Limited Partnership Interests, calculated immediately prior to any transfer of such Class C Limited Partnership Interest.

#### **4.4. Issuances of Partnership Interests to New and Existing Partners.**

(a) Issuance of Partnership Interests to New Limited Partners. The General Partner may admit one or more additional Persons as Limited Partners (“Additional Limited Partners”) to the Partnership at such times and upon such terms as it deems appropriate in its sole and unfettered discretion; provided, however, that the General Partner may only admit additional Persons as Limited Partners in relation to the issuance of equity incentives to key employees of the Partnership; provided, further that the General Partner may not issue such equity incentives to the extent they entitle the holders, in the aggregate, to a Percentage Interest in excess of twenty percent without the consent of the Class B Limited Partner and the Class C Limited Partner. All Class A Limited Partners, the Class B Limited Partner and the Class C Limited Partner shall be diluted proportionately by the issuance of such limited partnership interests. No Person may be admitted to the Partnership as a Limited Partner until he/she/it executes an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement.

(b) Issuance of an Additional Partnership Interest to an Existing Partner. The General Partner may issue an additional Partnership Interest to any existing Partner at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the issuance of an additional Partnership Interest to an existing Partner, the Percentage Interests of the members of the Founding Partner Group shall be diluted proportionately. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the Second Amended Buy-Sell and Redemption Agreement.

#### **4.5. Withdrawal of General Partner**

(a) Option. In the event of the withdrawal of the General Partner from the Partnership, the departing General Partner (the “*Departing Partner*”) shall, at the option of its successor (if any) exercisable prior to the effective date of the departure of that Departing Partner, promptly receive from its successor in exchange for its Partnership Interest as the General Partner, an amount in cash equal to its Capital Account balance, determined as of the effective date of its departure.

(b) Conversion. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), the Partnership Interest of the Departing Partner as the General Partner of the Partnership shall be converted into a Partnership Interest as a Limited Partner.

#### **4.6. Admission of Substitute Limited Partners and Successor General Partner.**

(a) Admission of Substitute Limited Partners. A transferee (which may be the heir or legatee of a Limited Partner) or assignee of a Limited Partner’s Partnership Interest shall be entitled to receive only the distributive share of the Partnership’s Profits, Losses, deductions, and credits attributable to that Partnership Interest. To become a substitute Limited Partner (a “*Substitute Limited Partner*”),



that transferee or assignee shall (1) obtain the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), (ii) comply with all the requirements of this Agreement and the Second Amended Buy-Sell and Redemption Agreement with respect to the Transfer of the Partnership Interest at issue, and (iii) execute an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Second Amended Buy-Sell and Redemption Agreement. Upon admission of a Substitute Limited Partner, that Limited Partner shall be subject to all of the restrictions applicable to, shall assume all of the obligations of, and shall attain the status of a Limited Partner under and pursuant to this Agreement with respect to the Partnership Interest held by that Limited Partner.

(b) Admission of Successor General Partner. A successor General Partner selected pursuant to Section 5.2 or the transferee of or successor to all of the Partnership Interest of the General Partner pursuant to Section 4.3(b) shall be admitted to the Partnership as the General Partner, effective as of the date of the withdrawal or removal of the predecessor General Partner or the date of Transfer of that predecessor's Partnership Interest.

(c) Action by General Partner. In connection with the admission of any substitute Limited Partner or successor General Partner or any additional Limited Partner, the General Partner shall have the authority to take all such actions as it deems necessary or advisable in connection therewith, including the amendment of Exhibit A and the execution and filing with appropriate authorities of any necessary documentation.

## ARTICLE 5

### DISSOLUTION AND WINDING UP

**5.1. Dissolution.** The Partnership shall be dissolved upon:

(a) The withdrawal, bankruptcy, or dissolution of the General Partner, or any other event that results in its ceasing to be the General Partner (other than by reason of a Transfer pursuant to Section 4.3(b));

(b) An election to dissolve the Partnership by the General Partner that is approved by the affirmative vote of a Majority Interest; *provided, however*, the General Partner may dissolve the Partnership without the approval of the Limited Partners in order to comply with Section 14 of the Second Amended Buy-Sell and Redemption Agreement; or

(c) Any other event that, under the Delaware Act, would cause its dissolution.

For purposes of this Section 5.1, the bankruptcy of the General Partner shall be deemed to have occurred when the General Partner: (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the General Partner in a proceeding of the type described in clauses (i) through (iv) of this paragraph; (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties; or (vii) one hundred twenty (120) days expire after the date of the commencement of a proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or

similar relief under any law if the proceeding has not been previously dismissed, or ninety (90) days expire after the date of the appointment, without the General Partner's consent or acquiescence, of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties if the appointment has not previously been vacated or stayed, or ninety (90) days expire after the date of expiration of a stay, if the appointment has not previously been vacated.

**5.2. Continuation of the Partnership.** Upon the occurrence of an event described in Section 5.1(a), the Partnership shall be deemed to be dissolved and reconstituted if a Majority Interest elect to continue the Partnership within ninety (90) days of that event. If no election to continue the Partnership is made within ninety (90) days of that event, the Partnership shall conduct only activities necessary to wind up its affairs. If an election to continue the Partnership is made upon the occurrence of an event described in Section 5.1(a), then:

(a) Within that ninety (90)-day period a successor General Partner shall be selected by a Majority Interest;

(b) The Partnership shall be deemed to be reconstituted and shall continue until the end of the term for which it is formed unless earlier dissolved in accordance with this Article 5;

(c) The interest of the former General Partner shall be converted to an interest as a Limited Partner; and

(d) All necessary steps shall be taken to amend or restate this Agreement and the Certificate of Limited Partnership, and the successor General Partner may for this purpose amend this Agreement and the Certificate of Limited Partnership, as appropriate, without the consent of any Partner.

**5.3. Liquidation.** Upon dissolution of the Partnership, unless the Partnership is continued under Section 5.2, the General Partner or, in the event the General Partner has been dissolved, becomes bankrupt (as defined in Section 5.1), or withdraws from the Partnership, a liquidator or liquidating committee selected by a Majority Interest, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator shall agree not to resign at any time without fifteen (15) days' prior written notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, removal, or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers, and duties of the original Liquidator) shall within thirty (30) days thereafter be selected by a Majority Interest. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator shall be deemed to refer also to any such successor or substitute Liquidator appointed in the manner provided herein. Except as expressly provided in this Article 5, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided herein. The Liquidator shall liquidate the assets of the Partnership and apply and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) To the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees and closing costs;

(b) To the payment of creditors of the Partnership, including Partners, in order of priority provided by law;

(c) To the Partners and assignees to the extent of, and in proportion to, the positive balances in their respective Capital Accounts as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2); *provided, however*, the Liquidator may place in escrow a reserve of cash or other assets of the Partnership for contingent liabilities in an amount determined by the Liquidator to be appropriate for such purposes; and

(d) To the Partners in proportion to their respective Percentage Interests.

**5.4. Distribution in Kind.** Notwithstanding the provisions of Section 5.3 that require the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if on dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners and assignees, the Liquidator may defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (other than those to Partners) and/or may distribute to the Partners and assignees, in lieu of cash, as tenants in common and in accordance with the provisions of Section 5.3, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any joint operating agreements or other agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

**5.5. Cancellation of Certificate of Limited Partnership.** Upon the completion of the distribution of Partnership property as provided in Sections 5.3 and 5.4, the Partnership shall be terminated, and the Liquidator (or the General Partner and Limited Partners if necessary) shall cause the cancellation of the Certificate of Limited Partnership in the State of Delaware and of all qualifications and registrations of the Partnership as a foreign limited partnership in jurisdictions other **than** the State of Delaware and shall take such other actions as may be necessary to terminate the Partnership.

**5.6. Return of Capital.** The General Partner shall not be personally liable for the return of the Capital Contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be **made** solely from Partnership assets.

**5.7. Waiver of Partition.** Each Partner hereby waives any rights to partition of the Partnership property.

## ARTICLE 6

### GENERAL PROVISIONS

**6.1. Amendments to Agreement.** The General Partner may amend this Agreement without the consent of any Partner if the General Partner reasonably determines that such amendment is necessary and appropriate; *provided, however, any* action taken by the General Partner shall be subject to its fiduciary duties to the Limited Partners under the Delaware Act; provided further that any amendments

that adversely affect the Class B Limited Partner or the Class C Limited Partner may only be made with the consent of such Partner adversely affected.

**6.2. Addresses and Notices.** Any notice, demand, request, or report required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by United States registered or certified mail to the Partner at his/her/its address as shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in any Partnership Interest by reason of an assignment or otherwise.

**6.3. Titles and Captions.** All article and section titles and captions in the Agreement are for convenience only, shall not be deemed part of this Agreement, and in no way shall define, limit, extend, or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to “Articles,” “Sections” and “Exhibits” are to “Articles,” “Sections” and “Exhibits” of this Agreement. All Exhibits hereto are incorporated herein by reference.

**6.4. Pronouns and Plurals.** Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

**6.5. Further Action.** The parties shall execute all documents, provide all information, and take or refrain from taking all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

**6.6. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

**6.7. Integration.** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

**6.8. Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

**6.9. Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement, or condition.

**6.10. Counterparts.** This agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

**6.11. Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

**6.12. Invalidity of Provisions.** If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is

not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

**6.13. General Partner Discretion.** Whenever the General Partner may use its sole discretion, the General Partner may consider any items it deems relevant, including its own interest and that of its affiliates.


**6.14. Mandatory Arbitration.** In the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that the Partnership or such applicable affiliate thereof may pursue a temporary restraining order and /or preliminary injunctive relief in connection with any confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and thereafter, require arbitration of all issues of final relief. The arbitration will be conducted by the American Arbitration Association, or another mutually agreeable arbitration service. A panel of three arbitrators will preside over the arbitration and will together deliberate, decide and issue the final award. The arbitrators shall be duly licensed to practice law in the state of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each, each deposition to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admissions; (v) ten request for production (in response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents, including electronic documents); and (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrators shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. The arbitrators will not have the authority to render a decision that contains an outcome based on error of state or federal law or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrators have failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable arbitration services rules. All proceedings shall be conducted in Dallas, Texas or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and /or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

*Remainder of Page intentionally Left Blank.  
Signature Page Follows.*

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

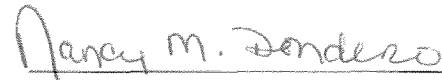
GENERAL PARTNER:

**STRAND-ADVISORS, INC.,**  
a Delaware corporation

By:   
James D. Dondero,  
President

LIMITED PARTNERS:

**THE DUGABOY INVESTMENT TRUST**


By:   
Name: Nancy M. Dondero  
Its: Trustee

**THE MARK AND PAMELA OKADA FAMILY TRUST - EXEMPT TRUST #1**

By: \_\_\_\_\_  
Name: Lawrence Tonomura  
Its: Trustee

**THE MARK AND PAMELA OKADA FAMILY TRUST - EXEMPT TRUST #2**

By: \_\_\_\_\_  
Name: Lawrence Tonomura  
Its: Trustee

**MARK K. OKADA**  
  
Mark K. Okada

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above.

GENERAL PARTNER:

**STRAND ADVISORS, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
James D. Dondero,  
President

LIMITED PARTNERS:

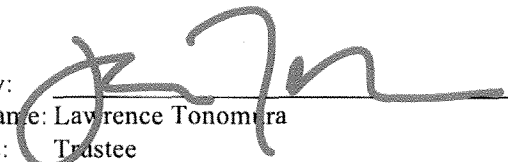
**THE DUGABOY INVESTMENT TRUST**

By: \_\_\_\_\_  
Name: Nancy M. Dondero  
Its: Trustee

**THE MARK AND PAMELA OKADA FAMILY TRUST - EXEMPT TRUST #1**

By:   
Name: Lawrence Tonomura  
Its: Trustee

**THE MARK AND PAMELA OKADA FAMILY TRUST - EXEMPT TRUST #2**

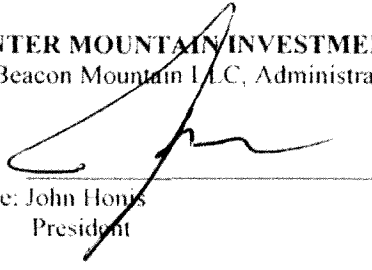
By:   
Name: Lawrence Tonomura  
Its: Trustee

**MARK K. OKADA**

\_\_\_\_\_  
Mark K. Okada



**HUNTER MOUNTAIN INVESTMENT TRUST**  
By: Beacon Mountain LLC, Administrator

By:   
Name: John Honis  
Its: President

*Signature Page to Fourth Amended and Restated  
Agreement of Limited Partnership*

**EXHIBIT A**

	<u>Percentage Interest</u>	
	<u>By Class</u>	<u>Effective %</u>
<b><u>CLASS A PARTNERS</u></b>		
<u>GENERAL PARTNER:</u>		
Strand Advisors	0.5573%	0.2508%
<u>LIMITED PARTNERS:</u>		
The Dugaboy Investment Trust	74.4426%	0.1866%
Mark K. Okada	19.4268%	0.0487%
The Mark and Pamela Okada Family Trust - Exempt Trust #1	3.9013%	0.0098%
The Mark and Pamela Okada Family Trust - Exempt Trust #2	1.6720%	0.0042%
Total Class A Percentage Interest	100.0000%	0.500%
<b><u>CLASS B LIMITED PARTNERS</u></b>		
Hunter Mountain Investment Trust	100.0000%	55.0000%
<b><u>CLASS C LIMITED PARTNERS</u></b>		
Hunter Mountain Investment Trust	100.0000%	44.500%
<b><u>PROFIT AND LOSS AMONG CLASSES</u></b>		
Class A Partners	0.5000%	
Class B Partners	55.0000%	
Class C Partners	44.5000%	

**EXHIBIT B**

**ADDENDUM  
TO THE  
FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP  
OF  
HIGHLAND CAPITAL MANAGEMENT, L.P.**

THIS ADDENDUM (this “**Addendum**”) to that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, to be effective as of December 24, 2015, as amended from time to time (the “**Agreement**”), is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Strand Advisors, Inc., as the sole General Partner (the “**General Partner**”) of Highland Capital Management, L.P. (the “**Partnership**”) and \_\_\_\_\_ (“\_\_\_\_\_”) (except as otherwise provided herein, all capitalized terms used herein shall have the meanings set forth in the Agreement).

**RECITALS:**

WHEREAS, the General Partner, in its sole and unfettered discretion, and without the consent of any Limited Partner, has the authority under (i) Section 4.4 of the Agreement to admit Additional Limited Partners, (ii) Section 4.6 of the Agreement to admit Substitute Limited Partners and (iii) Section 6.1 of the Agreement to amend the Agreement;

WHEREAS, the General Partner desires to admit \_\_\_\_\_ as a Class \_\_\_ Limited Partner holding a \_\_\_% Percentage Interest in the Partnership as of the date hereof;

WHEREAS, \_\_\_\_\_ desires to become a Class \_\_\_ Limited Partner and be bound by the terms and conditions of the Agreement; and

WHEREAS, the General Partner desires to amend the Agreement to add \_\_\_\_\_ as a party thereto.

**AGREEMENT:**

RESOLVED, as a condition to receiving a Partnership Interest in the Partnership, \_\_\_\_\_ acknowledges and agrees that he/she/it (i) has received and read a copy of the Agreement, (ii) shall be bound by the terms and conditions of the Agreement; and (iii) shall promptly execute an addendum to the Second Amended Buy-Sell and Redemption Agreement; and be it

FURTHER RESOLVED, the General Partner hereby amends the Agreement to add \_\_\_\_\_ as a Limited Partner, and the General Partner shall attach this Addendum to the Agreement and make it a part thereof; and be it

FURTHER RESOLVED, this Addendum may be executed in any number of counterparts, all of which together shall constitute one Addendum binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the day and year above written.

GENERAL PARTNER:

**STRAND ADVISORS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NEW LIMITED PARTNER:

\_\_\_\_\_]

AGREED AND ACCEPTED:

In consideration of the terms of this Addendum and the Agreement, in consideration of the Partnership's allowing the above signed Person to become a Limited Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms and conditions of the Agreement as though a party thereto.

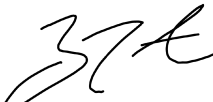
SPOUSE OF NEW LIMITED PARTNER:

\_\_\_\_\_]

**B1040 (FORM 1040) (12/15)**

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b> Highland Capital Management, L.P.		<b>DEFENDANTS</b> Highland Capital Management Services, Inc., James Dondero, Nancy Dondero, and The Dugaboy Investment Trust
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.) Hayward PLLC 10501 N. Central Expressway, Suite 106 Dallas, Texas 75231 Tel.: (972) 755-7100		<b>ATTORNEYS</b> (If Known) Stinson LLP (for Highland Capital Management Services, Inc. and Nancy Dondero); Heller, Draper & Horn, L.L.C. (for The Dugaboy Investment Trust)
<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Breach of Contract; Turnover Pursuant to 11 USC 542(b); Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 548(a)(1)(A) and 550; Avoidance and Recovery of Actual Fraudulent Transfer under 11 USC 544(b) and 550 and Tex. Bus. & C. Code 24.005(a)(1); Declaratory Relief; Breach of Fiduciary Duty; Aiding & Abetting Breach of Fiduciary Duty		
<b>NATURE OF SUIT</b>  (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input checked="" type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny  (continued next column)		<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input checked="" type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$ Damages in an amount to be determined at trial
Other Relief Sought Turnover of amounts due under note, avoidance of transfers to defendants, declaratory relief, punitive and exemplary damages, costs, attorneys' fees		

## B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Highland Capital Management, L.P.		BANKRUPTCY CASE NO. 19-34054-sgj11
DISTRICT IN WHICH CASE IS PENDING Northern District of Texas		DIVISION OFFICE Dallas
		NAME OF JUDGE Stacey G. C. Jernigan
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING		DIVISION OFFICE
		NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE August 27, 2021		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Zachery Z. Annable

## INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

## **EXHIBIT 3**

**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Consolidated Financial Statements and  
Supplemental Information  
December 31, 2018**



**Highland Capital Management, L.P.**

(A Delaware Limited Partnership)

Index

**December 31, 2018**

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## Report of Independent Auditors

To the General Partner of Highland Capital Management, L.P.

We have audited the accompanying consolidated financial statements of Highland Capital Management, L.P. and its subsidiaries (collectively, the "Partnership"), which comprise the consolidated balance sheet as of December 31, 2018, and the related consolidated statements of income, of changes in partners' capital and of cash flows for the year then ended.

### ***Management's Responsibility for the Consolidated Financial Statements***

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditors' Responsibility***

Our responsibility is to express an opinion on the consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Partnership's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Partnership's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### ***Opinion***

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Highland Capital Management, L.P. and its subsidiaries as of December 31, 2018, and the results of their operations, changes in their partners' capital and their cash flows for the year then ended, in accordance with accounting principles generally accepted in the United States of America.

### ***Other Matter***

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements taken as a whole. The Supplemental Consolidating Balance Sheet, the Supplemental Consolidating Statement of Income, the Supplemental Unconsolidated Balance Sheet and the Supplemental Unconsolidated Statement of Income are presented for purposes of additional analysis and are not a required part of the consolidated financial statements. The information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves and other additional procedures, in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the consolidated financial statements taken as a whole.

*PricewaterhouseCoopers LLP*

June 3, 2019

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PricewaterhouseCoopers LLP, 2121 N Pearl Street, Suite 2000, Dallas, Texas 75201  
T: (214) 999 1400, F: (214) 754 7991, [www.pwc.com/us](http://www.pwc.com/us)

**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Consolidated Balance Sheet**  
**December 31, 2018**

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(in thousands)

**Assets**

Cash and cash equivalents	\$ 5,034
Investments at fair value (cost \$922,027)	845,186
Management and incentive fees receivable	2,393
Due from broker for securities sold, not yet settled	598
Other assets	9,255
Notes and other amounts due from affiliates	173,398
Intangible assets	3,022
Fixed assets and leasehold improvements, net of accumulated depreciation of \$11,197	4,581
<b>Total assets</b>	<u><u>\$ 1,043,467</u></u>

**Liabilities and partners' capital**

**Liabilities**

Accounts payable	\$ 4,983
Securities sold, not yet purchased (proceeds \$26,135)	32,357
Withdrawals payable	57,009
Due to brokers	116,560
Due to brokers for securities purchased, not yet settled	1,640
Accrued and other liabilities	40,246
Notes payable	55,752
Investment liabilities	46,092
<b>Total liabilities</b>	<u>354,639</u>

Non-controlling interest	316,867
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<b>Partners' capital</b>	371,961
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<b>Total liabilities and partners' capital</b>	<u><u>\$ 1,043,467</u></u>
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The accompanying notes are an integral part of these consolidated financial statements.

**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Consolidated Statement of Income**  
**Year Ended December 31, 2018**

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(in thousands)

**Revenue:**

Management fees	\$ 36,600
Interest and investment income	15,831
Incentive fees	70
Shared services fees	9,187
Other income	2,622
	<hr/>
Total revenue	64,310
	<hr/>

**Expenses:**

Compensation and benefits	34,475
Professional fees	17,679
Interest expense	5,670
Marketing and advertising expense	2,413
Depreciation and amortization	1,317
Investment and research consulting	1,082
Bad debt expense	7,862
Other operating expenses	10,027
	<hr/>
Total expenses	80,525
	<hr/>

**Other Income/(Expense):**

Other income	9,826
Impairment on intangible assets	(2,830)
	<hr/>
Total other income	6,996

Loss before investment and derivative activities	<hr/>
	(9,219)

**Realized and unrealized loss on investments and derivatives:**

Net realized loss on investments and derivatives	(31,517)
Net change in unrealized loss on investments and derivatives	(93,755)
	<hr/>
Net realized and unrealized loss on investments and derivatives	(125,272)
	<hr/>

Net loss	(134,491)
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Net loss attributable to non-controlling interest	<hr/>
	(61,313)

Net loss attributable to Highland Capital Management, L.P.	<hr/>
	\$ (73,178)

The accompanying notes are an integral part of these consolidated financial statements.

**Highland Capital Management, L.P.**  
 (A Delaware Limited Partnership)  
**Consolidated Statement of Changes in Partners' Capital**  
**Year Ended December 31, 2018**

---

*(in thousands)*

	<u>General Partner</u>	<u>Limited Partners</u>	<u>Total</u>
Partners' capital, December 31, 2017	\$ 163	\$ 450,014	\$ 450,177
Net loss attributable to Highland Capital Management, L.P.	\$ (183)	\$ (72,995)	\$ (73,178)
Partner distributions	<u>\$ (13)</u>	<u>\$ (5,025)</u>	<u>\$ (5,038)</u>
Partners' capital, December 31, 2018	<u>\$ (33)</u>	<u>\$ 371,994</u>	<u>\$ 371,961</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Highland Capital Management, L.P.**  
**(A Delaware Limited Partnership)**  
**Consolidated Statement of Cash Flows**  
**Year Ended December 31, 2018**

(in thousands)

**Cash flows from operating activities:**

Net loss	\$ (134,491)
Adjustment to reconcile net loss to net cash provided from operating activities:	
Net realized loss on investments and derivative transactions	31,517
Net change in unrealized loss on investments and derivative transactions	93,755
Amortization and depreciation	1,317
Changes in assets and liabilities:	
Management and incentive fee receivable	9,468
Due from brokers	1,689
Due from affiliate	(10,989)
Other assets	4,272
Intangible assets	3,308
Accounts payable	546
Accrued and other liabilities	1,214
Due to brokers for securities purchased, not yet settled	1,886
Due to brokers	11,665
Net cash provided from operating activities	<u>15,157</u>

**Cash flows from investing activities:**

Purchases of fixed assets and leasehold improvements, net	(67)
Purchases of investments	(195,263)
Proceeds from dispositions of investments	258,858
Proceeds from securities sold, not yet purchased	46,550
Issuance of notes receivable to affiliates	(2,400)
Proceeds from repayments of notes receivable from affiliates	3,395
Purchases of investments to cover securities sold, not yet purchased	(127,954)
Net cash used in investing activities	<u>(16,881)</u>

**Cash flows from financing activities:**

Payments on notes payable & investment liabilities	(2,743)
Proceeds from long-term debt	38,501
Capital contributions from minority interest investors of consolidated entities	14,615
Capital withdrawals by minority interest investors of consolidated entities	(141,986)
Partner distributions	(5,060)
Net cash used in financing activities	<u>(96,673)</u>

Net decrease in cash and cash equivalents (98,397)

**Cash and cash equivalents**

Beginning of year	103,479
De-consolidating funds adjustment	(48)
End of year	<u>\$ 5,034</u>

**Supplemental disclosure of cash flow information:**

Interest paid during the year	\$ (5,629)
Taxes paid during the year	(510,961)
Investments acquired for non-cash consideration	26,018
Investments disposed for non-cash consideration	116

The accompanying notes are an integral part of these consolidated financial statements.

## **Highland Capital Management, L.P.**

### **Notes to Consolidated Financial Statements**

#### **December 31, 2018**

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#### **1. Description of Business**

Highland Capital Management, L.P. (the “Partnership”) was formed on July 7, 1997 as a limited partnership in the state of Delaware. The Partnership is a registered investment adviser under the Investment Advisers Act of 1940 that manages collateralized loan obligations (“CLOs”), hedge funds, private equity funds, and other leveraged loan transactions that are collateralized predominately by senior secured bank debt and high-yield bonds. The Partnership and its subsidiaries make direct investments in debt, equity, and other securities in the normal course of business. The Partnership’s general partner is Strand Advisors, Inc. (the “General Partner”). The Partnership is owned by an unaffiliated (other than through its direct ownership) trust as well as affiliated trusts and personal holdings of the senior management of the Partnership.

As of December 31, 2018, the Partnership provided investment advisory services for eighteen CLOs, five separate accounts, one master limited partnership, and nine hedge funds or private equity structures, with total fee-earning assets under management of approximately \$3.1 billion. The Partnership also provides investment services on behalf of affiliate advisors.

#### **2. Summary of Significant Accounting Policies**

The following is a summary of the significant accounting policies followed by the Partnership in preparation of its consolidated financial statements.

##### **Basis of Accounting**

The Partnership’s consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles in the United States of America (“U.S. GAAP”) as set forth in the Financial Accounting Standards Board’s Accounting Standards Codification and are stated in the United States Dollar.

##### **Use of Estimates**

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts and disclosures in the consolidated financial statements. Actual results could differ from those estimates and those differences could be material.

##### **Principles of Consolidation**

The consolidated financial statements include the accounts of the Partnership and the Partnership’s consolidated subsidiaries (“Consolidated Entities”), which are comprised of (i) those entities in which it has controlling investment and has control over significant operating, financial and investing decisions, (ii) those entities in which it, as the general partner, has control over significant operating, financial and investing decisions, and (iii) variable interest entities (“VIEs”) in which it is the primary beneficiary as described below.

The Partnership determines whether an entity has equity investors who lack the characteristics of a controlling financial interest or does not have sufficient equity at risk to finance its expected activities without additional subordinated financial support from other parties. If an entity has either of these characteristics, it is considered a VIE and must be consolidated by its primary beneficiary, which is the party that, along with its affiliates and de facto agents, absorbs a majority of the VIEs’ expected losses or receives a majority of the expected residual returns as a result of holding variable interests.

**Highland Capital Management, L.P.**  
 (A Delaware Limited Partnership)  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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The Partnership assesses consolidation requirements pursuant to ASU 2015-02: Consolidation, which was adopted using the modified retrospective method and resulted in an effective date of adoption of January 1, 2016.

The Partnership and its affiliate's involvement with unconsolidated VIEs is generally limited to that of an advisory services provider, and their investment, if any, represents an insignificant interest in the relevant investment entities' assets under management. The Partnership's affiliate's exposure to risk in these entities is generally limited to any capital contribution it has made or is required to make and any earned but uncollected asset based and performance fees. The Partnership has not issued any investment performance guarantees to these VIEs or their investors, except that the Partnership has agreed to subject the full value of its equity interest in Highland Prometheus Fund to dollar-for-dollar reduction to the extent the third party investor in such fund does not achieve an annual target return.

As of December 31, 2018, the net assets of the unconsolidated VIEs and the Partnership's maximum risk of loss were as follows:

*(in thousands)*

	<u>Unconsolidated VIE Net Assets</u>	<u>Carrying Value and Maximum Risk of Loss</u>
Sponsored investment funds	\$ 206,329	\$ 12,178

**Consolidation of Variable Interest Entities**

The Partnership consolidates the following VIEs (along with majority owned funds: Highland Diversified Credit Fund, L.P., and Highland Select Equity Fund, L.P., collectively the "Consolidated Investment Funds"), as the Partnership (or its wholly owned subsidiaries) controls the general partner of the respective entities and is responsible for the daily operations of the following entities:

- Highland Multi Strategy Credit Fund, L.P. ("Multi Strategy Master"), formerly Highland Credit Opportunities CDO, L.P., a Delaware limited partnership that commenced operations on December 15, 2005 and changed its name on August 26, 2014;
- Highland Multi-Strategy Master Fund, L.P. ("Multi-Strategy Master"), a Bermuda limited partnership that commenced operations on July 18, 2006;
- Highland Multi-Strategy Fund, L.P. ("Multi-Strat Domestic Feeder"), a Delaware limited partnership that commenced operations on July 6, 2006;
- Highland Restoration Capital Partners Offshore, L.P. ("Restoration Offshore"), a Cayman limited partnership that commenced operations on September 2, 2008;
- Highland Restoration Capital Partners, L.P. ("Restoration Onshore"), a Delaware limited partnership that commenced operations on September 2, 2008; and



**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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**Consolidation of Majority Owned Entities**

The Partnership consolidates the following entities as it has a controlling majority interest:

- 100% interest in Highland Capital Special Allocation, LLC (“HCSA”), a Delaware limited liability company that commenced operations on December 21, 2006;
- 100% interest in Highland Receivables Finance 1, LLC, a Delaware limited liability company that commenced operations on December 29, 2006;
- 100% interest in Highland Multi-Strategy Onshore Master SubFund, LLC, a Delaware limited liability company that commenced operations on July 19, 2006;
- 100% interest in Highland Multi-Strategy Onshore Master Subfund II, LLC, LLC, a Delaware limited liability company that commenced operations on February 22, 2007;
- 100% interest in Highland Brasil, LLC, a Delaware limited liability company that commenced operations on January 28, 2014;
- 100% interest in Highland Capital Management (Singapore) Pte, Ltd. (“HCM Singapore”), a company organized in the Republic of Singapore that commenced operations on April 2, 2008;
- 100% interest in Highland Capital Management Korea, Ltd. (“HCM Korea”), a company organized in the Republic of Korea that commenced operations on August 2, 2012;
- 100% interest in Highland Capital Management Latin America, L.P., (“HCM Latin America”), a Cayman company that was formed on April 13, 2017;
- 100% interest in HE Capital, LLC, a Delaware limited liability company that was formed on March 22, 2007;
- 100% interest in De Kooning, Ltd, a Cayman company that was formed on December 1, 2012;
- 100% interest in Hirst, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Hockney, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Oldenburg, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Eames, Ltd, a Cayman company that was formed on December 12, 2012;
- 99.9% interest in Penant Management, L.P., a Delaware limited partnership that was formed on December 12, 2012;
- 100% interest in Pollack, Ltd., a Cayman company that was formed on December 1, 2012;
- 100% interest in Warhol, Ltd., a Cayman company that was formed on December 1, 2012;

**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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- 100% interest in HCREP-I Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREP-XI Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in HCREP-XII Holding Corp., a Delaware company that was formed on December 13, 2012;
- 100% interest in Highland ERA Management, LLC, a Delaware limited liability company that was formed on February 1, 2013;
- 100% interest in The Dondero Insurance Rabbi Trust., a trust that was formed on May 27, 2004;
- 100% interest in The Okada Insurance Rabbi Trust, a trust that was formed on May 27, 2004;
- 100% interest in Highland Employee Retention Assets (“HERA”), LLC, a Delaware limited liability company that was formed on October 26, 2009;
- 100% interest in Highland Diversified Credit Fund, L.P. (“Highland Offshore Partners”), a Delaware limited partnership which began operations on February 29, 2000 and was organized for the sole purpose of investing substantially all of its assets in Highland Offshore Partners, L.P.;
- 99.6% interest in Highland Select Equity Master Fund, LP, and Highland Select Equity Fund, LP Delaware limited partnerships which began operations on January 1, 2002 and was organized for the purpose of investing and trading in large and small cap stocks that trade for less than intrinsic value;
- 100% interest in Highland Fund Holdings, LLC, a Delaware limited liability company that was formed on May 24, 2016;
- 100% interest in Maple Avenue Holdings, LLC, a Texas limited liability company formed on August 17, 2016;
- 100% interest in Highland HCF Advisor, Ltd., a Cayman company that was formed on October 27, 2017;
- 100% interest in Asury Holdings, LLC, a Delaware limited liability company formed on February 14, 2017 and;
- 100% interest in Highland CLO Management, Ltd., a Cayman company that was formed on October 27, 2017.

All inter-partnership and intercompany accounts and transactions involving the above listed Consolidated Entities have been eliminated in all of the aforementioned consolidating schedules. All the Consolidated Investment Funds are, for U.S. GAAP purposes, investment companies under the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide - Investment Companies. The Partnership has retained the specialized accounting of these funds required under U.S. GAAP.

**Highland Capital Management, L.P.**  
**(A Delaware Limited Partnership)**  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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The following table includes a rollforward of non-controlling interests from December 31, 2017, to December 31, 2018.

*(in thousands)*

Noncontrolling interest, December 31, 2017	\$ 424,844
Net loss attributable to noncontrolling interest	(61,313)
Noncontrolling partner contributions	14,615
Noncontrolling partner distributions	<u>(58,061)</u>
Noncontrolling interest of deconsolidated entities	<u>(3,218)</u>
Noncontrolling interest, December 31, 2018	<u>\$ 316,867</u>

**Investment Transactions**

Investment transactions are recorded on a trade date basis. Investments in securities are valued at market or fair value at the date of the consolidated financial statements with the resulting net unrealized appreciation or depreciation reflected in the Consolidated Statement of Income. Realized gains and losses on the transactions are determined based on either the first-in, first-out or specific identification method.

See Note 5 for the Partnership's fair value process and hierarchy disclosures.

**Management and Incentive Fee Revenue**

The Partnership recognizes revenue as earned in connection with services provided under collateral and investment management agreements. Under these agreements, the Partnership earns management fees calculated as a percentage of assets under management or net asset value. The Partnership also has an opportunity to earn additional incentive fees and incentive allocations related to certain management agreements depending ultimately on the financial performance of the underlying assets the Partnership manages. During the year ended December 31, 2018, the Partnership and its Consolidated Entities recognized management fees and incentive fees of approximately \$36.6 million and \$0.1 million, respectively.

**Shared Services Revenue**

The Partnership recognizes revenue as earned in connection with services provided to related parties under various shared services agreements. Under these agreements, the Partnership earns fees for services including, but not limited to, back office support functions, marketing, and investment advisory services. During the year ended December 31, 2018, the Partnership and its Consolidated Entities recognized shared services revenue of approximately \$9.2 million, which has been presented in *Shared services fees* in the Consolidated Statement of Income. See further discussion in Note 8.

**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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**Income and Expense Recognition**

Interest on currently paying debt instruments is accrued as earned and dividend income and dividends on securities sold, not yet purchased are recorded on the ex-dividend date, net of withholding taxes. In certain instances where the asset has defaulted or some amount of the interest payment is deemed uncollectable, interest is recognized when received. Discounts and premiums associated with purchases of investments are accreted and amortized to interest income, except for deep-discounted debt where ultimate collection of interest and principal may be in doubt. Such accretion/amortization is calculated on an effective-yield basis over the life of the investment. Amendment fees are recognized when agreed to by the underlying company and all settlement contingencies are met. Operating expenses, including interest on securities sold short, not yet purchased, are recorded on the accrual basis as incurred.

**Income Taxes**

The Partnership is not subject to federal income taxes, and therefore, no provision has been made for such taxes in the accompanying consolidated financial statements. Income taxes are the responsibility of the partners. Certain consolidated subsidiaries are subject to federal income taxes.

Certain entities that are included in these consolidated financial statements are subject to federal and/or state income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the period that includes the enactment date. See further discussion in Note 13.

**Cash and Cash Equivalents**

Cash and cash equivalents consist of cash held at U.S. and foreign banks, deposits with original maturities of less than 90 days, and money market funds. Cash equivalents are carried at cost, which approximates market value. At December 31, 2018, the Partnership and Consolidated Entities held cash balances at certain financial institutions in excess of the federally insured limit of \$0.3 million. The Partnership and Consolidated Entities regularly monitor the credit quality of these institutions.

**Notes Receivable**

Notes receivable consists of secured promissory notes with maturities greater than one year. When available, the Partnership uses observable market data, including pricing on recent closed transactions to value notes. When appropriate, these notes may be valued using collateral values. Adjustments to the value may be performed in circumstances where attributes specific to the collateral exist suggesting impairment.

**Other Intangible Assets**

Goodwill and other intangible assets are recorded on the Consolidated Balance Sheet at current carrying values. The Partnership and its Consolidated Entities perform an impairment test on an annual basis. Any impairment in the value of other intangible assets is accounted for in the year when it occurs.

**Fixed Assets and Leasehold Improvements**

Fixed assets and leasehold improvements are carried at cost, less accumulated depreciation. Depreciation is provided using the straight-line method over the shorter of the estimated useful life of the assets or the lease term.

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The Partnership and its Consolidated Entities are depreciating fixed assets as follows:

	<u>Period</u>
Leasehold improvements	Lease term
Buildings	29 - 40 years
Furniture and fixtures	7 years
Computer and equipment	3 - 5 years
Computer software	3 years

**Securities Sold, Not Yet Purchased**

Certain of the Partnership's Consolidated Investment Funds engage in "short sales" as part of their investment strategies. Short selling is the practice of selling securities that are borrowed from a third party. The Consolidated Investment Funds are required to return securities equivalent to those borrowed for the short sale at the lender's demand.

Pending the return of such securities, the Consolidated Investment Funds deposit with the lender as collateral the proceeds of the short sale plus additional cash. The amount of the required deposit, which earns interest, is adjusted periodically to reflect any change in the market price of the securities that the Consolidated Investment Funds are required to return to the lender. A gain (which cannot exceed the price at which the Consolidated Investment Funds sold the security short) or a loss (which theoretically could be unlimited in size) will be settled upon termination of a short sale.

**Due to/from Brokers**

Due to and from broker balances recorded on the Consolidated Balance Sheet include liquid assets maintained with brokers and counterparties for margin account balances and the amounts due for or due from the settlement of purchase and sales transactions. Certain due to and from broker balances have been reported on a net-by-counterparty basis where, in accordance with contractual rights and the Partnership's opinion, there is a right of offset in the event of bankruptcy or default by a counterparty.

**Options Contracts**

The Partnership and the Consolidated Entities may purchase and write call and put options to gain market exposure or to hedge investments. A call option gives the purchaser of the option the right (but not the obligation) to buy, and obligates the seller to sell (when the option is exercised), the underlying position at the exercise price at any time or at a specified time during the option period. A put option gives the holder the right to sell and obligates the writer to buy the underlying position at the exercise price at any time or at a specified time during the option period. When the Partnership or the Consolidated Entities purchase (write) an option, an amount equal to the premium paid (received) by the entity is reflected as an asset (liability). The amount of the asset (liability) is subsequently marked-to-market to reflect the current market value of the option purchased (written). When a security is purchased (or sold) through an exercise of an option, the related premium paid (or received) is added to (or deducted from) the basis of the security acquired or deducted from (or added to) the proceeds of the security sold. When an option expires (or the Partnership or the Consolidated Entities enter into a closing transaction), the entity realizes a gain or loss on the option to the extent of the premiums received or paid (or gain or loss to the extent the cost of the closing transaction exceeds the premium received or paid). Exercise of a written option could result in the Partnership or the Consolidated Entities purchasing a security at a price different from the current market value.

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The Partnership and the Consolidated Entities are exposed to counterparty risk from the potential that a seller of an option contract does not sell or purchase the underlying asset as agreed under the terms of the option contract. The maximum risk of loss from counterparty risk to the Partnership and the Consolidated Entities is the greater of the fair value of its open option contracts or the premiums paid to purchase the open option contracts. The Partnership and the Consolidated Entities consider the credit risk of the intermediary counterparties to its option transactions in evaluating potential credit risk.

**Margin Transactions**

To obtain more investable cash, certain of the Consolidated Entities may use various forms of leverage including purchasing securities on margin. A margin transaction consists of purchasing an investment with money loaned by a broker and agreeing to repay the broker at a later date. Interest expense on the outstanding margin balance is based on market rates at the time of the borrowing.

**Withdrawals Payable**

Withdrawals are recognized as liabilities, net of incentive allocations, when the amount requested in the withdrawal notice becomes fixed and determinable. This generally may occur either at the time of receipt of the notice, or on the last day of a fiscal period, depending on the nature of the request. As a result, withdrawals paid after the end of the year, but based upon year-end capital balances are reflected as withdrawals payable at December 31, 2018. Withdrawal notices received for which the dollar amount is not fixed remains in capital until the amount is determined. At December 31, 2018, the Consolidated Investment Funds had withdrawals payable of \$57.0 million.

**Foreign Currency Transactions**

The Partnership's subsidiaries HCM Singapore and HCM Korea use Singapore dollars and Korean won, respectively, as their functional currency. All foreign currency asset and liability balances are presented in U.S. dollars in the consolidated financial statements, translated using the exchange rate as of December 31, 2018. Revenues and expenses are recorded in U.S. dollars using an average exchange rate for the relative period. Foreign currency transaction gains and losses resulting from transactions outside of the functional currency of an entity are included in *Other income* on the Consolidated Statement of Income.

The Consolidated Entities do not isolate that portion of the results of operations resulting from changes in foreign exchange rates or investment or fluctuations from changes in market prices of securities held. Such fluctuations are included within the *Net realized and unrealized gains or loss from investments* on the Consolidated Statement of Income.

**Life Settlement Contracts**

One of the Consolidated Investment Funds, through a subsidiary, holds life settlement contracts and accounts for them using the fair value method. These contracts are recorded as a component of "Investments at fair value" on the Consolidated Balance Sheet. Realized and unrealized gains (losses) on the contracts are recorded in the Consolidated Income Statement. Cash flows relating to the purchase and sale of the contracts are recorded as a component of *Purchase of investments* and *Proceeds from dispositions of investments* on the Consolidated Statement of Cash Flows. At December 31, 2018, the Consolidated Investment Fund was invested in 13 policies, which had a total face value of approximately \$145.3 million and a fair value of \$35.7 million.

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**Financing**

The Partnership and its Consolidated Entities may finance the acquisition of its investments in securities and loans through financing arrangements which are classified in Notes payable and Investment liabilities on the Consolidated Balance Sheet. The Partnership and its Consolidated Entities recognize interest expense on all borrowings on the accrual basis in the Consolidated Statement of Income.

**Financial Instruments**

The Partnership and its Consolidated Entities determine fair value of financial instruments as required by U.S. GAAP. The carrying amounts for cash and cash equivalents, receivables, accounts payable, withdrawals payable, debt and notes payable, due to brokers, investment liabilities and accrued liabilities approximate their fair values. For fair value of investment, see Note 5.

**Accounts Payable, Accrued and Other Liabilities**

Expenses are recorded on an accrual basis, as incurred. Current liabilities are included in Accounts payable. Long-term liabilities are included in Accrued and other liabilities.

**Partners' Capital**

The Partnership agreement requires that income or loss of the Partnership be allocated to the partners in accordance with their respective partnership interests.

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**3. Fixed Assets and Leasehold Improvements**

Fixed assets and leasehold improvements are comprised of the following as of December 31, 2018:

*(in thousands)*

Leasehold improvements	\$	7,193
Buildings		2,595
Furniture and fixtures		2,796
Computer and equipment		2,863
Computer software		331
Accumulated depreciation		<u>(11,197)</u>
	<u>\$</u>	<u>4,581</u>

Depreciation expense in 2018 totaled approximately \$1.3 million for the Partnership and its subsidiaries.

**4. Investments**

Detailed below is a summary of the Partnership and its Consolidated Entities' investments at December 31, 2018:

*(in thousands)*

	<u>Amortized Cost/Cost</u>	<u>Fair Value</u>
Common equity securities	\$ 423,306	\$ 535,374
Closed-end mutual funds	100,788	94,845
Floating rate syndicated bank loans	142,586	72,622
Real Estate Investment Trusts	28,271	57,475
Life settlement contracts	65,276	35,744
Limited partnership interests	24,892	30,521
Rights & warrants	26,661	7,446
LLC interests	10,629	2,775
Preferred equity	258	8,282
Asset-backed securities	7,350	102
Participation interests	6,590	-
Corporate bonds	85,421	-
Total investments	<u>\$ 922,027</u>	<u>\$ 845,186</u>
	<u>Proceeds</u>	<u>Fair Value</u>
Securities sold, not yet purchased	<u>\$ (26,135)</u>	<u>\$ (32,357)</u>



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**5. Fair Value of Financial Instruments**

**Fair Value Measurement**

U.S. GAAP defines fair value as the price an entity would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants as of the measurement date. The standard requires fair value measurement techniques to reflect the assumptions market participants would use in pricing an asset or liability and, where possible, to maximize the use of observable inputs and minimize the use of unobservable inputs. It also establishes the following hierarchy that prioritizes the valuation inputs into three broad levels:

- Level 1 – Valuation based on unadjusted quoted prices in active markets for identical assets and liabilities that the Partnership and the Consolidated Entities have the ability to access as of the measurement date. Valuations utilizing Level 1 inputs do not require any degree of judgment.
- Level 2 – Valuations based on (a) quoted prices for similar instruments in active markets; (b) quoted prices for identical or similar instruments in markets that are not active that are reflective of recent market transactions; or (c) models in which all significant inputs are observable, either directly or indirectly.
- Level 3 – Valuations based on indicative quotes that do not reflect recent market transactions and models or other valuation techniques in which the inputs are unobservable and significant to the fair value measurement, which includes situations where there is little, if any, market activity for the asset or liability.

The availability of observable inputs varies among financial instruments and is affected by numerous factors, including the type of instruments, the period of time in which the instrument has been established in the marketplace, market liquidity for an asset class and other characteristics particular to a transaction. When the inputs used in a valuation model are unobservable, management is required to exercise a greater degree of judgment to determine fair value than it would for observable inputs. For certain instruments, the inputs used to measure fair value may fall into different levels of the hierarchy discussed above. In those cases, the instruments are categorized for disclosure purposes based on the lowest level of inputs that are significant to their fair value measurements.

The Partnership and Consolidated Entities use prices and inputs that are current as of the measurement dates. The Partnership also considers the counterparty's non-performance risk when measuring the fair value of its investments.

During periods of market dislocation, the ability to observe prices and inputs for certain instruments may change. These circumstances may result in the instruments being reclassified to different levels within the hierarchy over time. They also create an inherent risk in the estimation of fair value that could cause actual amounts to differ from management's estimates. Whenever possible, the Partnership and its Consolidated Entities use actual market prices or relevant observable inputs to establish the fair value of its assets and liabilities. In cases where observable inputs are not available, the Partnership and Consolidated Entities develop methodologies that provide appropriate fair value estimates. These methodologies are reviewed on a continuous basis to account for changing market conditions.

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The Partnership has established policies, as described above, processes and procedures to ensure that valuation methodologies for investments and financial instruments that are categorized within all levels of the fair value hierarchy are fair and consistent. A Pricing Committee has been established to provide oversight of the valuation policies, processes and procedures, and is comprised of various personnel from the Partnership. The Pricing Committee meets monthly to review the proposed valuations for investments and financial instruments. The Pricing Committee is responsible for establishing the valuation policies and evaluating the overall fairness and consistent application of those policies.

As of December 31, 2018, the Partnership and its Consolidated Entities' investments consisted primarily of common equity securities, closed-end mutual funds, floating rate syndicated bank loans, real estate investment trusts, life settlement contracts, limited partnership interests, rights and warrants, LLC interests, asset-backed securities, and preferred equity. In addition, certain of the Consolidated Entities engage in short sale transactions. The majority of these financial instruments are not listed on national securities exchanges and management is required to use significant judgment to estimate their values.

**Public Equity Investments**

Publicly traded equities, including closed-end mutual funds and publicly traded REITs are valued at the closing price at the date of the financial statements. The fair value of equity investments that are not traded on national exchanges or through real-time quotation services are derived from methodologies that provide appropriate fair value estimates. Equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets.

**Private Equity Investments**

The Partnership and Consolidated Entities hold private equity investments which often resulted from the restructuring of other instruments which are classified as common equity securities. These assets are valued using market data obtained from a third-party pricing service and/or quotes from other parties dealing in the specific assets when available. In the event both a reliable market quote and third-party pricing service data are not available for such assets, the Partnership and Consolidated Entities will fair value the assets using various methodologies, as appropriate for individual investments, including comparable transaction multiples, comparable trading multiples, and/or discounted cash flow analysis. When utilizing comparable trading multiples, the Investment Manager determines comparable public companies (peers) based on industry, size, developmental stage, strategy, etc., and then calculates a trading multiple for each comparable company identified by using either a price to book ratio based on publically available information about the underlying comparable company or by dividing the enterprise value of the comparable company by its earnings before interest, taxes, depreciation and amortization (EBITDA) or similar metrics. In certain instances, the inputs used in the calculation of the trading multiples may vary based on the industry or development stage of the company. A multiple determined by the Investment Manager to be within a reasonable range as calculated amongst its peers is then applied to the underlying company's price to book ratio or EBITDA (which may be normalized to adjust for certain nonrecurring events), to calculate the fair value of the underlying company. The fair value may be further adjusted for entity specific facts and circumstances. Private equity investments with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Private equity investments that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

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The Consolidated Entities also invest in warrant securities of publicly-traded companies. The fair value of these investments is based on an option pricing model. The option model bases warrant value on a number of factors including underlying equity price as of the valuation date, strike price, exercise date, time to expiration and volatility. Warrant investments that have observable volatility are classified as Level 2 assets. Warrant investments where volatility inputs are not observable are valued using an estimated volatility input, and are classified as Level 3 assets.

**Debt Securities**

The Partnership and Consolidated Entities invest in various types of debt, including floating rate syndicated bank loans, which are almost exclusively valued using market data obtained from one or more third-party pricing services or brokers. In instances where a third-party pricing service does not provide pricing for a specific asset, the Partnership and Consolidated Entities first seek to obtain reliable market quotes from other parties dealing in the specific asset. Loans and bonds with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Loans and bonds that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

Absent both a reliable market quote and third-party pricing service date, the Partnership and Consolidated Entities may use various models to establish an estimated exit price. These investments are classified as Level 3 assets. Models used for debt securities are primarily based on identifying comparable assets for which market data is available and pricing the target asset consistent with the yields of the comparable assets. As circumstances require, other industry accepted techniques may be used in modeling debt assets.

**Life Settlement Contracts**

Life Settlement contracts are valued using mortality tables and interest rate assumptions that are deemed by management to be appropriate for the demographic characteristics of the parties insured under the policies. Management generally utilizes an independent third party firm to perform these calculations and provide the relevant inputs. Management evaluates the results based on visible market activity and market research. Since these inputs are not readily observable, these contracts are classified as Level 3 assets.

At December 31, 2018, the Consolidated Entities' investments in life settlement contracts consisted of the following:

(U.S. dollars in thousands, except number of policies)

**Remaining Life Expectancy**

<b>(in years)</b>	<b>Number of Policies</b>	<b>Face Value</b>	<b>Fair Value</b>
1-2	-	\$ -	\$ -
2-3	3	33,785	16,940
3-4	-	-	-
4-5	-	-	-
Thereafter	10	111,500	18,804
<b>Total</b>	<b>13</b>	<b>\$ 145,285</b>	<b>\$ 35,744</b>

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**Asset-Backed Securities**

The Consolidated Entities invest in a variety of asset-backed securities. Asset-backed securities are generally valued based on complex cash flow models that analyze the cash flows generated by the investment's underlying assets after adjusting for expected default rates, prepayment rates, collateral quality, market liquidity among other factors. These models are then adjusted based on spreads available in the market place from various research firms, dealers, and trading activity. The Consolidated Entities generally utilize an independent third parties to provide the relevant inputs. The Consolidated Entities evaluate the results based on visible market activity and market research. When appropriate, the Consolidated Entities may apply other techniques based on a specific asset's characteristics. Asset-backed securities with quotes that are based on actual trades with a sufficient level of activity on or near the valuation date are classified as Level 2 assets. Asset-backed securities that are priced using quotes derived from implied values, bid/ask prices for trades that were never consummated, or a limited amount of actual trades are classified as Level 3 assets because the inputs used by the brokers and pricing services to derive the values are not readily observable.

**Limited Partnership and LLC Interests**

The Partnership and its Consolidated Entities hold limited partnership and LLC interests in various entities. These assets are valued as the net asset value of the limited partnership interests because the entities utilize fair value accounting for their own financial statements. These interests are classified as Level 3 assets.

The Partnership categorizes investments recorded at fair value in accordance with the hierarchy established under U.S. GAAP. The following table provides a summary of the financial instruments recorded at fair value on a recurring basis by level within the hierarchy as of December 31, 2018:

*(in thousands)*

<b>Assets</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total Fair Value at 12/31/18</b>
Common equity securities	\$ 139,236	\$ 296,695	\$ 99,443	\$ 535,374
Closed-end mutual funds	94,845	-	-	94,845
Floating rate syndicated bank loans	-	21	72,601	72,622
Real Estate Investment Trusts	46,594	10,881	-	57,475
Life settlement contracts	-	-	35,744	35,744
Limited partnership interests	-	-	30,521	30,521
Rights & warrants	20	123	7,303	7,446
LLC interests	-	-	2,775	2,775
Preferred equity	8,282	-	-	8,282
Asset-backed securities	-	-	102	102
<b>Total</b>	<b>\$ 288,977</b>	<b>\$ 307,720</b>	<b>\$ 248,489</b>	<b>\$ 845,186</b>
<b>Liabilities</b>				
Common stock & Options sold short	\$ 32,357	\$ -	-	\$ 32,357

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The classification of a financial instrument within Level 3 is based on the significance of the unobservable inputs to the overall fair value measurement. The following table provides a roll forward of the investments classified within Level 3 for the year ended December 31, 2018:

(in thousands)

	Fair Value at December 31, 2017	Purchases	Sales and Maturities	Restructures	Transfers Into Level 3	Net Realized Gains / (Losses)	Net Unrealized Gains / (Losses)	Fair Value at December 31, 2018
Common equity securities	\$ 141,201	\$ 1,058	\$ (116)	\$ -	\$ -	\$ -	\$ (42,700)	\$ 99,443
Floating rate syndicated bank loans	64,307	12,146	(1,952)	-	-	(2,799)	899	72,601
Life settlement contracts	28,959	7,353	-	-	-	-	(568)	35,744
Limited partnership interests	27,863	4,600	(4,766)	-	928	351	1,545	30,521
Rights & w arrants	8,013	-	-	-	-	-	(710)	7,303
LLC interests	3,352	165	(1,312)	-	-	985	(415)	2,775
Asset-backed securities	6,477	1	(3,051)	(2,171)	(928)	(39,580)	39,354	102
	<u>\$ 280,172</u>	<u>\$ 25,323</u>	<u>\$ (11,197)</u>	<u>\$ (2,171)</u>	<u>\$ -</u>	<u>\$ (41,043)</u>	<u>\$ (2,595)</u>	<u>\$ 248,489</u>

All net realized and unrealized gains and losses in the tables above are reflected in the accompanying Consolidated Income Statement. Approximately \$41.8 million of the net unrealized losses presented in the table above relate to investments held as of December 31, 2018.

The following page includes a summary of significant unobservable inputs used in the fair valuations of assets and liabilities categorized within Level 3 of the fair value hierarchy.

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Category	Ending Balance at 12/31/2018	Valuation Technique	Unobservable Inputs	Input Value(s)	
Common equity securities	\$ 99,443	Multiples Analysis	Multiple of EBITDA	2.5x - 7.0x	
			Cap Rate	8.0 - 10.0%	
			Multiple of Revenue	0.20x - 0.30x	
			Liquidity Discount	25%	
			Discount Rate	10.5 - 40.0%	
		Discounted Cash Flow	Terminal Multiple	1.25x - 6.50x	
			Long-Term Growth Rate	2%	
			Transaction Analysis	Multiple of EBITDA	4.0x - 7.75x
		Bid Indications	Cap Rate	8 - 10%	
			Enterprise Value (\$mm)	\$720.0 - \$765.0	
		Impairment Analysis	Recoverable Value	0%	
Appraisal	N/A	N/A			
Floating rate syndicated bank loans	72,601	Multiples Analysis	Multiple of EBITDA	2.0x - 5.0x	
			Multiple of Revenue	0.35x - 0.50x	
		Escrow Recovery Analysis	Risk Discount	40%	
			Appraisal	N/A	
		Bid Indications	Transaction Price	10%	
		Sales Proceeds Analysis	Discount Rate	6.0%	
			Discounted Cash Flow	Discount Rate	12.3% - 40.0%
		Terminal Multiple	1.25x		
		Spread Adjustment	0.0% - 6.3%		
		Life settlement contracts	35,744	Discounted Cash Flow	Discount Rate
Limited partnership interests	30,521	Net Asset Value	Various models including liquidation analysis, and third-party pricing vendor	N/A	
Rights & w warrants	7,303	Discounted Cash Flow	Discount Rate	11.0% - 17.0%	
			Terminal Multiple	6.5x	
		Multiples Analysis	Multiple of EBITDA	6.0x - 7.0x	
			Transaction Analysis	Multiple of EBITDA	7.25x - 7.75x
			Bid Indication of Value	Enterprise Value (in millions)	\$720.0 - \$765.0
LLC interests	2,775	Discounted Cash Flow	Discount Rate	6%	
			Adjusted Appraisal	Minority Discount	25%
		Bid Indication	Total Purchase Price (in millions)	\$130.00	
Asset-backed securities	102	Adjusted NAV	N/A	N/A	
<b>Total</b>	<u>\$ 248,489</u>				

In addition to the unobservable inputs utilized for various valuation methodologies, the Partnership often uses a combination of two or more valuation methodologies to determine fair value for a single holding. In such instances, the Partnership assesses the methodologies and ascribes weightings to each methodology. The selection of weightings is an inherently subjective process, dependent on professional judgement. These selections may have a material impact to the concluded fair value for such holdings.

The significant unobservable inputs used in the fair value measurement of the Partnership's assets could fluctuate significantly, resulting in a significantly higher or lower fair value measurement.

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**6. Financial Instruments with Concentration of Credit and Other Risks**

**Financial Instruments**

The Partnership and its Consolidated Entities' investments include, among other things, equity securities, debt securities (both investment and non-investment grade) and bank loans. The Consolidated Entities may also invest in derivative instruments, including total return and credit default swaps. Investments in these derivative instruments throughout the year subject the Consolidated Entities to off-balance sheet market risk, where changes in the market or fair value of the financial instruments underlying the derivative instruments may be in excess of the amounts recognized in the Consolidated Balance Sheet.

**Market Risk**

Market risk represents the potential loss that may be incurred by the Partnership and its Consolidated Entities due to a change in the market value of its investments or the value of the investments underlying swap agreements. The Partnership and its Consolidated Entities' exposure to market risk is affected by a number of macroeconomic factors, such as interest rates, availability of credit, inflation rates, economic uncertainty and changes in laws and regulations. These factors may affect the level and volatility of securities prices and the liquidity of the Partnership and its Consolidated Entities investments. Volatility or illiquidity could impair the Partnership and its Consolidated Entities performance or result in losses. The Partnership and its Consolidated Entities may maintain substantial trading positions that can be adversely affected by the level of volatility in the financial markets. The performance of life settlement contracts may be adversely impacted by the under estimation of mortality and other rates.

**Credit Risk**

Credit risk is the potential loss the Partnership and its Consolidated Entities may incur as a result of the failure of a counterparty or an issuer to make payments according to the terms of a contract. Because the Consolidated Entities enter into over-the-counter derivatives such as swaps, it is exposed to the credit risk of their counterparties. To limit the credit risk associated with such transactions, the Consolidated Entities execute transactions with financial institutions that the Investment Manager believes to be financially viable.

**Liquidity Risk**

The Consolidated Entities' limited partner interests have not been registered under the Securities Act of 1933 or any other applicable securities law. There is no public market for the interests, and neither the Consolidated Entities nor their manager expects such a market to develop.

**Business Risk**

The Partnership provides advisory services to the Consolidated Entities. Consolidated Entities could be materially affected by the liquidity, credit and other events of the Partnership.

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**High Yield Bonds and Loans**

The Partnership and its Consolidated Entities' investment portfolios consist of floating rate syndicated bank loans and fixed income securities that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. In addition, certain of the Partnership and its Consolidated Entities' investments have resale or transfer restrictions that further reduce their liquidity. Because of the inherent uncertainty of these investments, the Investment Manager's best estimates may differ significantly from values that would have been used had a broader market for the investments existed.

When the Partnership and its Consolidated Entities purchase a senior secured syndicated bank loan, it enters into a contractual relationship directly with the corporate borrower, and as such, is exposed to certain degrees of risk, including interest rate risk, market risk and the potential non-payment of principal and interest, including default or bankruptcy of the corporate borrower or early payment by the corporate borrower. Typically, senior secured syndicated bank loans are secured by the assets of the corporate borrower and the Partnership and its Consolidated Entities have a policy of regularly reviewing the adequacy of each corporate borrower's collateral.

The Partnership and its Consolidated Entities may invest in high-yield bonds that have been assigned lower rating categories or are not rated by the various credit rating agencies. Bonds in the lower rating categories are generally considered to be speculative with respect to the issuer's ability to repay principal and pay interest. They are also subject to greater risks than bonds with higher ratings in the case of deterioration of general economic conditions. Due to these risks, the yields and prices of lower-rated bonds are generally volatile, and the market for them is limited, which may affect the ability to liquidate them if needed.

**Debt Obligations**

The Partnership and its Consolidated Entities' investment portfolio consists of collateralized loan obligations that are not listed on a national securities exchange. These investments trade in a limited market and it may not be possible to immediately liquidate them if needed. Because of the inherent uncertainty of these investments, the Partnership's best estimates may differ significantly from values that would have been used had broader market for the investments existed.

**Distressed Investments**

A portion of the high yield corporate bonds and senior secured syndicated bank loans in which the Partnership and its Consolidated Entities invest have been issued by distressed companies in an unstable financial condition that have experienced poor operating performance and may be involved in bankruptcy or other reorganization and liquidation proceedings. These investments have substantial inherent risks. Many of these distressed companies are likely to have significantly leveraged capital structures, which make them highly sensitive to declines in revenue and to increases in expenses and interest rates. The leveraged capital structure also exposes the companies to adverse economic factors, including macroeconomic conditions, which may affect their ability to repay borrowed amounts on schedule.



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**Corporate Bonds, Preferred Securities, and Loans**

The Consolidated Entities may invest in corporate bonds, floating rate syndicated bank loans, and preferred securities which are rated in the lower rating categories by the various credit rating agencies (or in comparable non-rated securities). Securities in the lower rating categories are subject to greater risk of loss of principal and interest than higher-rated securities and are generally considered to be predominantly speculative with respect to the issuer's capacity to pay interest and repay principal. They are also subject to greater risks than securities with higher ratings in the case of deterioration of general economic conditions. Because of these greater risks associated with the lower-rated securities, the yields and prices of such securities may be more volatile than those for higher-rated securities. The market for lower-rated securities is thinner and less active than that for higher-rated securities, which could adversely affect the prices at which these securities may be sold by the Consolidated Entities.

**Limited Diversification**

The Investment Manager attempts to diversify the Consolidated Entities' investments. However, the Consolidated Entities' portfolios could become significantly concentrated in any one issuer, industry, sector strategy, country or geographic region, and such concentration of credit risk may increase the losses suffered by the Consolidated Entities. In addition, it is possible that the Investment Manager may select investments that are concentrated in certain classes of financial instruments. This limited diversity could expose the Consolidated Entities to losses that are disproportionate to market movements as a whole.

At December 31, 2018, the Consolidated Entities' investments were predominantly concentrated in the United States and Cayman Islands.

**Exit Difficulties**

The Partnership and its Consolidated Entities cannot assure investors that it will be able to exit its investments by sale or other disposition at attractive prices, if at all. The mergers and acquisitions and public securities markets are highly cyclical, which means that the Consolidated Entities' investments, even its best performing investments, may be illiquid for extended periods of time despite the Consolidated Entities' efforts to identify attractive exit opportunities. Additionally, a significant portion of the Consolidated Entities' assets at any time will likely consist of debt obligations and other securities that are thinly-traded, for which no market exists and/or are restricted as to their transferability under applicable law and/or documents governing particular transactions of the Consolidated Entities. In some cases, the Consolidated Entities may be unable to realize an investment prior to the date on which the Consolidated Entities are scheduled to terminate and/or have to sell or otherwise dispose of one or more investments on disadvantageous terms as a result of the Consolidated Entities' termination, or distribute such investments in kind.

**Custody Risk**

The clearing operations for the Partnership and its Consolidated Entities are provided by major financial institutions. In addition, all of the Partnership and its Consolidated Entities' cash and investments are held with banks or brokerage firms, which have worldwide custody facilities and are members of all major securities exchanges. The Partnership or its Consolidated Entities may lose all or a portion of the assets held by these banks or brokerage firms if they become insolvent or fail to perform pursuant to the terms of their obligations. While both the U.S. Bankruptcy Code and the Securities Investor Protection Act of 1970 seek to protect customer property in the event of a broker-dealer's failure, insolvency or liquidation, the Partnership and its Consolidated Entities might be unable to recover the full value of their assets or incur losses due to their assets being unavailable for a period of time.

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**Leverage Risk**

The Consolidated Entities may borrow funds from brokers, banks and other lenders to finance its trading operations. The use of leverage can, in certain circumstances, magnify the losses to which the Consolidated Entities' investment portfolio may be subject. The use of margin and short-term borrowings creates several risks for the Consolidated Entities. If the value of the Consolidated Entities' securities fall below the margin level required by a counterparty, additional margin deposits would be required. If the Consolidated Entities are unable to satisfy a margin call, the counterparty could liquidate the Consolidated Entities' positions in some or all of the financial instruments that are in the account at the prime broker and cause the Consolidated Entities to incur significant losses. In addition, to the extent the Consolidated Entities have posted excess collateral for margin transactions, there is a risk that the counterparty will fail to fulfill its obligation to return the full value of that collateral.

The failure to satisfy a margin call, or the occurrence of other material defaults under margin or other financing agreements, may trigger cross-defaults under the Consolidated Entities' agreements with other brokers, lenders, clearing firms or other counterparties, multiplying the adverse impact to the Consolidated Entities. In addition, because the use of leverage allows the Consolidated Entities to control positions worth significantly more than its investment in those positions, the amount that the Consolidated Entities may lose in the event of adverse price movements is high in relation to the amount of their investment.

In the event of a sudden drop in the value of the Consolidated Entities' assets, the Consolidated Entities may not be able to liquidate assets quickly enough to satisfy their margin or collateral requirements. As a result, the Consolidated Entities may become subject to claims of financial intermediaries, and such claims could exceed the value of its assets. The banks and dealers that provide financing to the Consolidated Entities have the ability to apply discretionary margin, haircut, and financing and collateral valuation policies. Changes by banks and dealers in any of the foregoing may result in large margin calls, loss of financing and forced liquidations of positions and disadvantageous prices.

**Foreign Currency Risk**

The Partnership and its Consolidated Entities may invest in securities or maintain cash denominated in currencies other than the U.S. dollar. The Partnership and its Consolidated Entities are exposed to risk that the exchange rate of the U.S. dollar relative to other currencies may change in a manner that has an adverse effect on the reported value of the Partnership and its Consolidated Entities' assets and liabilities denominated in currencies other than the U.S. dollar.

**Concentration of Investments**

At December 31, 2018, the Consolidated Entities' investments and derivative contracts were predominantly concentrated in the United States and Cayman Islands and across several industries.

**Litigation Risk**

The Partnership and its Consolidated Entities are periodically subject to legal actions arising from the ordinary course of business. The ultimate outcome of these cases is inherently uncertain and could result in additional losses to the Partnership and/or its Consolidated Entities. Refer to Note 14 for a discussion of open litigation.

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**7. Intangible Assets**

On May 12, 2017, HCM Latin America, as manager, purchased all rights and obligations for management of a certain hedge fund. As of December 31, 2018, the current carrying value of these rights and obligations is \$3.0 million, which consists of the original purchase price of \$2.0 million and a deferred purchase price of \$1.0 million and is reflected in the Consolidated Balance Sheet.

The Partnership and its Consolidated Entities perform an impairment test as required by U.S. GAAP on a yearly basis. The Partnership has determined that an impairment charge was necessary for the value obtained on December 19, 2017, for subadvisory and shared servicing rights from an affiliate. As of December 31, 2018, the asset was determined to be fully impaired and an impairment expense of \$2.8 million is reflected in the Consolidated Statement of Income.

**8. Related Party Transactions**

**Investments Under Common Control**

Certain members of the Partnership's management serve as members on the Boards of Directors for some of the companies with which it invests. Because these individuals participate in the management of these companies, investments held by the Partnership and its subsidiaries in these companies may, from time to time, not be freely tradable. As of December 31, 2018, the Partnership and its Consolidated Entities held the following investments in these companies:

*(in thousands)*

<u>Issuer</u>	<u>Type of Investment</u>	<u>Fair Value</u>
Metro-Goldwyn-Mayer, Inc.	Common Stock	296,695
Cornerstone Healthcare Group Holding, Inc.	Common Equity	59,539
OmniMax International, Inc.	Term Loan	52,464
JHT Holdings Inc.	Common Stock	25,099
OmniMax International, Inc.	Common Equity	7,804
Carey International, Inc.	Term Loan	5,401
CCS Medical, Inc.	Loan	5,960
Trussway Holdings, LLC	Common Equity	4,582
JHT Holdings Inc.	Term Loan	4,160
OmniMax International, Inc.	Warrants	551

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Certain investments are issued and managed by affiliates of the Partnership. These investments are subject to the same valuation policies and procedures as similar investments within the same level of the fair value hierarchy. As of December 31, 2018, the Partnership and the Consolidated Entities held the following investments that were issued and managed by affiliates of the Partnership:

(in thousands)

Issuer	Type of Investment	Fair Value
Harko, LLC	LLC Units	\$ 2,721
Highland CLO Funding	Partnership Interest	610
Highland Energy MLP Fund	Mutual Fund Shares	1,363
Highland Floating Rate Opportunities Fund	Closed-end mutual fund shares	832
Highland Global Allocation Fund	Mutual Fund Shares	2,173
Highland Long/Short Equity Fund	Mutual Fund Shares	267
Highland Long/Short Healthcare Fund	Mutual Fund Shares	2,963
Highland Master Loan Fund	Limited Partnership interest	106
Highland Merger Arbitrage Fund	Mutual Fund Shares	1,321
Highland Opportunistic Credit Fund	Mutual Fund Shares	5,477
Highland Premier Growth Equity Fund	Mutual Fund Shares	64
Highland Small Cap Equity Fund	Mutual Fund Shares	465
NexPoint Strategic Opportunities Fund	Mutual Fund Shares	36,563
NexPoint Multi Family Capital Trust	REIT	10,881
NexPoint Real Estate Strategies Fund	Closed-end mutual fund shares	1,454
NexPoint Residential Trust	REIT	85,223

**Expenses Reimbursable by Funds Managed**

In the normal course of business, the Partnership typically pays invoices it receives from vendors for various services provided to the investment funds the Partnership manages. A summary of these eligible reimbursable expenses are then submitted to the trustee/administrator for each respective fund, typically on a quarterly basis, and the Partnership receives payment as reimbursement for paying the invoices on behalf of the respective funds. As of December 31, 2018, approximately \$6.4 million in reimbursable expenses were due from various affiliated funds and entities for these eligible expenses, and is included in *Other Assets* in the accompanying Consolidated Balance Sheet.

**Accounts Held with Related Party**

During the year the Partnership and its Consolidated Entities maintained bank accounts at NexBank, SSB ("NexBank"), a related party by way of common control. As of December 31, 2018, balances in these accounts were approximately \$0.5 million, a portion of which exceeds Federal deposit insurance limits.

**Investment in Affiliated Loans**

During the year, certain subsidiaries of the Partnership were invested in several bank loans in which NexBank was the agent bank. Interest earned on the loans during the year was approximately \$10.4 million and is included in interest and investment income in the Consolidated Statement of Income. At December 31, 2018, these subsidiaries were invested in NexBank agented loans with commitments and market values totaling approximately \$83.3 million and \$56.5 million, respectively.

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**Notes and Other Amounts Due from Affiliates**

During the year ended December 31, 2018, Highland Capital Management Fund Advisors, L.P. (“HCMFA”) did not issue any new promissory notes to the Partnership. The outstanding promissory notes accrue interest at a rate ranging from of 1.97 - 2.62%, the mid-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$5.3 million and is payable on demand. The Partnership will not demand payment on amounts owed that exceed HCMFA’s excess cash availability prior to May 31, 2021. The fair value of the Partnership’s outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, NexPoint Advisors, L.P. (“NPA”) did not issue any new promissory notes to the Partnership. The outstanding promissory note accrues interest at a rate of 6.0%. As of December 31, 2018 total interest and principal due on the outstanding promissory note was approximately \$28.6 million and is payable in annual installments throughout the term of the loan. The fair value of the Partnership’s outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, HCRE Partners, LLC (“HCRE”) issued a promissory note to the Partnership in the amount of \$0.8 million. The note accrues interest at a rate of 8.0%. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$9.4 million and is generally payable in annual installments throughout the term of the note. The fair value of the Partnership’s outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, Highland Capital Management Services, Inc. (“HCMSI”) issued promissory notes to the Partnership in the aggregate amount of \$0.4 million. All outstanding promissory notes accrue interest at a rate ranging from 2.75% – 3.05%, the long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$14.0 million and is generally payable in annual installments throughout the term of the notes. The fair value of the Partnership’s outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, James Dondero (“Dondero”) issued promissory notes to the Partnership in the aggregate amount of \$14.9 million. The outstanding promissory notes accrue interest at a rate ranging from 2.03% – 2.95%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$29.2 million and is generally payable in annual installments throughout the term of the note. The fair value of the Partnership’s outstanding notes receivable approximates the carrying value of the notes receivable.

During the year ended December 31, 2018, Mark Okada (“Okada”) did not issue any new promissory notes to the Partnership. All outstanding promissory notes accrue interest at a rate of 2.25%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$1.3 million and is payable on demand. The fair value of the Partnership’s outstanding notes receivable approximates the carrying value of the notes receivable.

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During the year ended December 31, 2018, The Dugaboy Investment Trust (“Dugaboy”) did not issue any new promissory notes to the Partnership. All outstanding promissory notes accrue interest at a rate of 3.26%, the average long-term applicable federal rate as promulgated by the Internal Revenue Service. As of December 31, 2018 total interest and principal due on outstanding promissory notes was approximately \$20.1 million and is payable in annual installments throughout the term of the note. The fair value of the Partnership’s outstanding notes receivable approximates the carrying value of the notes receivable.

On December 21, 2015, the Partnership entered into a contribution agreement (the “Contribution Agreement”) with an affiliated trust. Pursuant to the Contribution Agreement, a note (the “Note Receivable”) in the amount of \$63.0 million was due to the Partnership. The Note Receivable will mature on December 21, 2030. The Note Receivable accrues interest at a rate of 2.61% per annum. Accrued interest is paid-in-kind, with principal receipts occurring pursuant to a note amortization schedule, with such annual receipts commencing December 21, 2019. During the year, the trust pre-paid \$2.1 million. As of December 31, 2018 total interest and principal due on the Note Receivable was approximately \$60.2 million.

**Services Performed by or on Behalf of an Affiliate**

In March 2007, Highland Capital of New York, Inc. a New York corporation (“Highland New York”), was formed and has performed marketing services for the Partnership and its affiliates in connection with the Partnership’s investment management and advising business, including, but not limited to, assisting Highland Capital in the marketing and sales of interests in investment pools for which Highland Capital serves as the investment manager. The Partnership is charged a marketing services fee for the services that Highland New York performs on the Partnership’s behalf. Separately, the Partnership pays for, and seeks reimbursement for, various operating expenses on behalf of Highland New York. For the year ended December 31, 2018, total marketing fee expense charged to the Partnership by Highland New York was approximately \$0.9 million. Because the Partnership funded Highland New York’s operations, including amounts above the marketing fee, as of December 31, 2018, net amounts owed to the Partnership by Highland New York was approximately \$4.9 million.

Effective December 15, 2011, the Partnership commenced performing services on behalf of HCMFA, a Delaware limited partnership and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to HCMFA was approximately \$2.7 million and as of December 31, 2018, amount owed to the Partnership by HCMFA was approximately \$0.2 million.

Effective July 29, 2010, the Partnership commenced performing services on behalf of Falcon E&P Opportunities GP, LLC. (“Falcon”), a Delaware limited liability company and registered investment advisor. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to Falcon was approximately \$0.2 million and as of December 31, 2018, no amounts were owed to the Partnership by Falcon for services rendered.

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Effective March 17, 2017, pursuant to the Third Amended and Restated Sub-Advisory Agreement and the Fourth Amended and Restated Shared Services Agreement, the Partnership continued performing services on behalf of Acis Capital Management, L.P. ("Acis"), a Delaware limited partnership and registered investment advisor. Subadvisory services include investment advisory services and shared services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fees charged by the Partnership to Acis for shared services and subadvisory fees were approximately \$2.6 million and \$3.4 million, respectively. As of December 31, 2018, amount owed to the Partnership by Acis was approximately \$6.0 million. Although such fees were earned in 2018, all related revenues and receivables recorded by the Partnership have been fully reserved against based on estimated collectability.

Effective January 1, 2018, pursuant to the Third Amended and Restated Shared Services Agreement, the Partnership commenced performing services on behalf of NPA. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to NexPoint was approximately \$2.0 million and as of December 31, 2018, no amounts were owed to the Partnership by NexPoint for services rendered.

Effective September 1, 2017, pursuant to the Third Amended and Restated Shared Services Agreement dated September 26, 2017, the Partnership commenced performing services on behalf of NexBank Capital, Inc. ("NexBank Capital"), financial services company. Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to NexBank Capital was approximately \$0.2 million and as of December 31, 2018, \$0.1 million was owed to the Partnership by NexBank Capital for services rendered.

Effective September 1, 2017, pursuant to the Third Amended and Restated Investment Advisory Agreement dated September 26, 2017, the Partnership commenced performing services on behalf of NexBank SSB, ("NexBank"), a Texas savings bank. Services include investment advisory services. The Partnership charges a fee for the services performed. For the year ended December 31, 2018, the total fee charged by the Partnership to NexBank was approximately \$3.6 million and as of December 31, 2018, amounts owed by NexBank to the Partnership for services rendered were approximately \$0.9 million.

Effective April 1, 2015, the Partnership commenced performing services on behalf of NexPoint Real Estate Advisors, L.P. ("NREA"). Services include, but are not limited to compliance, accounting, human resources, IT and other back office support functions. NREA is charged a fee for the services provided. For the year ended December 31, 2018, the total fee charged to NREA by the Partnership was approximately \$1.0 million and as of December 31, 2018, no amounts were owed by NREA to the Partnership for services rendered.

Effective January 1, 2018, the Partnership entered in to a Payroll Reimbursement Agreement (the "Agreement") with HCMFA. Under the Agreement, HCMFA reimburses the Partnership for the cost of any dual employees of the Partnership and HCMFA and who provide advice to registered investment companies advised by HCMFA. For the year ended December 31, 2018, the total fees charged by the Partnership to HCMFA was approximately \$6.2 million and as of December 31, 2018, no amounts were owed by HCMFA to the Partnership for services rendered.

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Effective January 1, 2018, the Partnership entered in to a Payroll Reimbursement Agreement (the "Agreement") with NPA. Under the Agreement, NPA reimburses the Partnership for the cost of any dual employees of the Partnership and NPA and who provide advice to registered investment companies advised by NPA. For the year ended December 31, 2018, the total fees charged by the Partnership to NPA was approximately \$4.3 million and as of December 31, 2018, no amounts were owed by NPA to the Partnership for services rendered.

**Investment liability**

On December 28, 2016, the Partnership entered into a purchase and sale agreement with The Get Good Nonexempt Trust ("Get Good"). In consideration for a note receivable from an affiliate, the Partnership sold or participated certain investments that it already held, with the participated investments carrying an aggregate market value of \$21.3 million as of the date of the transaction. The fair value of the Agreement will fluctuate with the fair value of the securities, throughout the term of the Agreement. As of December 31, 2018, the fair value of the participated investments was \$12.1 million.

On December 5, 2016, Select entered in to Stock Purchase Agreements with two counterparties for shares of Trussway Industries ("Trussway"), in exchange for promissory notes in the aggregate amount of \$15.4 million. The promissory notes accrue interest at a rate of 2.07%, the long-term Applicable Federal Rate, compounded annually. Select must pay one-twenty-fifth of the initial note amounts, plus any additional principal attributable to the sale of Trussway, along with accumulated interest on an annual basis. The promissory notes will mature on December 5, 2041. As of December 31, 2018 the remaining principal payable on the promissory notes was \$14.8 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.

During 2014 and 2015, Select received multiple master securities loan agreements (the "Securities Agreements") for securities borrowed from an affiliate. The Securities Agreements accrue interest at a rate ranging from 0.38 - 0.48%, the short term Applicable Federal Rate. The fair value of the securities loans will fluctuate with the fair value of the borrowed securities, throughout the term of the Securities Agreements. As of December 31, 2018, the fair value of the loans was \$19.2 million. The fair value of Select's securities loans approximates the carrying value of the securities loans.

**9. Notes Payable**

**Promissory Notes and Loan Agreements**

On August 17, 2015, the Partnership entered in to a promissory note with Frontier State Bank ("Frontier") in the amount of \$9.5 million. Pursuant to the First Amended and Restated Loan Agreement, dated March 29, 2018, Frontier made an additional loan to the Partnership in the amount of \$1.0 million. The promissory note accrues interest at the 3 month LIBOR rate plus 4.75%, adjusted each date of change, per annum. Accrued interest shall be paid quarterly. The promissory note is collateralized by shares of voting common stock of MGM Holdings, Inc and will mature on August 17, 2021. As of December 31, 2018 the remaining principal payable on the promissory note was \$7.2 million. The fair value of the Partnership's outstanding notes payable approximates the carrying value of the notes payable.

On August 25, 2015, Highland Select Equity Fund, L.P. ("Select") entered in to a promissory note with Dugaboy in the amount of \$1.0 million. The promissory note accrues interest at a rate of 2.82%, the long-term Applicable Federal Rate, compounded annually. The accrued interest and principal of the promissory note is due and payable on demand. As of December 31, 2018 the remaining principal payable on the promissory note was \$1.0 million. The fair value of Select's outstanding notes payable approximates the carrying value of the notes payable.



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On October 7, 2016, the Partnership entered in to a promissory note with Acis in the amount of \$12.7 million. The Partnership is required to make certain payments of the initial note amount, plus accumulated interest on May 31 of each year, until maturity. The promissory note is set to mature on May 31, 2020. The promissory note accrues interest at a rate of 3.00% per annum. Pursuant to an Assignment and Transfer Agreement dated November 3, 2017, between Acis and an affiliate of the Partnership, Acis transferred the promissory note to the affiliate. As of December 31, 2018 the remaining principal payable on the promissory note was \$9.5 million.

On August 29, 2016, Maple Avenue Holdings, LLC (“Maple”) entered in to a promissory note with Great Southern Bank in the amount of \$3.9 million. Maple must pay principal and accrued interest installments on a monthly basis until maturity. The promissory note will mature on August 29, 2019. The promissory note accrues interest at a rate of 3.26% per annum. As of December 31, 2018 the remaining principal payable on the promissory note was \$3.4 million. The fair value of Maple’s outstanding notes payable approximates the carrying value of the notes payable.

On May 1, 2018, Multi Strategy Master executed a loan agreement (the “Loan Agreement”) with NexBank SSB, an affiliate of the Partnership. The original principal borrowed under the Loan Agreement was \$36.5 million. The loan bears interest at the 1-month LIBOR rate plus 3.25%. The maturity date is May 1, 2021. For the year ended December 31, 2018, the Multi Strategy Master incurred and paid approximately \$1.3 million of interest expense, and made aggregate principal payments of approximately \$1.9 million. Shares of Metro-Goldwyn Mayer, Inc. are pledged as collateral on the loan. The loan was used to purchase an outstanding redemption of \$38.7 million at a discount resulting in a reallocation of partners’ capital on the Statement of Changes in Partners’ Capital. As of December 31, 2018 the remaining principal payable on the loan was \$34.6 million. The fair value of Multi Strategy Master’s outstanding loan approximates the carrying value of the loan.

**10. Due to Broker**

As of December 31, 2018 the due to broker balance of approximately \$116.6 million is payable to financing counterparties for margin transactions.

**11. Commitments and Contingencies**

**Contracts in the Normal Course of Business**

In the normal course of business the Partnership and its subsidiaries may enter into contracts which provide general indemnifications and contain a variety of presentations and warranties that may expose the Partnership and its subsidiaries to some risk of loss. The Partnership regularly co-invests in vehicles it advises. The amounts committed are within the Partnerships capacity to fund when capital is called. In addition to the other financial commitments discussed in the consolidated financial statements, the amount of future losses arising from such undertakings, while not quantifiable, is not expected to be significant. Also refer to Note 8 for commitments of certain subsidiaries in affiliated loans.

**Loans as Co-Borrower**

The Partnership is a named co-borrower in a Bridge Loan Agreement (“Loan”) dated September 26, 2018 with Key Bank for \$556.3 million. The Loan accrues interest at the 3 month LIBOR rate plus 3.75%, per annum. Accrued interest shall be paid monthly by a borrower other than the Partnership (“Lead Borrower”). The Loan will mature on September 26, 2019. The carrying value of the Loan is reflected on the financial statements of the Lead Borrower.

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**Legal Proceedings**

The Partnership is a party to various legal proceedings arising in the ordinary course of business. While any proceeding or litigation has an element of uncertainty, management believes that the final outcome will not have a materially adverse effect on the Partnership's Consolidated Balance Sheet, Consolidated statement of Income, or its liquidity. See Note 14.

**Operating Leases**

The Partnership has an operating lease and associated commitments related to its main office space. Future minimum lease payments under operating lease commitments with initial or non-cancelable terms in excess of one year, at inception, are as follows:

*(in thousands)*

<b>Years Ending December 31,</b>	
2019	1,550
2020	1,566
2021	1,567
2022	522
Total	\$ 5,205

Total rental expense of the Partnership and its Consolidated Entities for operating leases was approximately \$1.5 million for the year ended December 31, 2018.

**12. Post Retirement Benefits**

In December 2006, the Partnership created a defined benefit plan to which all employees and certain affiliated persons could participate if they met the eligibility requirements. The Partnership uses a December 31 measurement date for its defined benefit plan.

Effective December 31, 2008, the Partnership amended the plan by freezing it to new participants and additional benefit accruals. A new amendment became effective on January 1, 2011 in which a named participant was admitted to the plan and is eligible to earn benefit accrual. 2018 expense reflects a service cost charge for the value of the new participant's benefit earned during 2018.

The Partnership's benefit plan obligation and plan assets for the year ended December 31, 2018 are reconciled in the tables below.

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(in thousands)

<b>Change in projected benefit obligation</b>	<b>2018</b>
Benefit obligation at beginning of year	\$ 2,578
Service cost	6
Interest cost	80
Plan participants' contributions	-
Amendments	-
Actuarial loss/(gain)	386
Acquisition/(divestiture)	-
Benefits paid	(121)
Benefit obligation at end of year	<u>\$ 2,929</u>
 <b>Change in plan assets</b>	 <b>2018</b>
Fair value of plan assets at beginning of year	\$ 2,924
Actual return on plan assets	449
Acquisition/(divestiture)	-
Employer contribution	-
Plan participants' contributions	-
Benefits paid	(121)
Other increase/(decrease)	-
Fair value of plan assets at year end	<u>\$ 3,252</u>
 <b>Reconciliation of Funded Status</b>	 <b>2018</b>
Accumulated benefit obligation at end of year	\$ 2,929
Projected benefit obligation at end of year	2,929
Fair value of assets at end of year	3,252
Funded status at end of year	<u>\$ 323</u>

The Partnership did not contribute to the plan during 2018.

**Assumptions**

Weighted-average assumptions used to determine benefit obligations at December 31, 2018:

Discount rate	3.19%
Rate of compensation increase	N/A

**Highland Capital Management, L.P.**  
**(A Delaware Limited Partnership)**  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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Weighted-average assumptions used to determine net periodic benefit cost at December 31, 2018:

Discount rate	3.19%
Expected long-term return on plan assets	3.19%
Rate of compensation increase	N/A

As of December 31, 2018, there were no plan assets categorized as Level 3.

**13. Income Taxes**

**The Partnership**

For U.S. income tax purposes, the Partnership is treated as a pass-through-entity, which means it is not subject to income taxes under current Internal Revenue Service or state and local guidelines. Each partner is individually liable for income taxes, if any, on their share of the Partnership's net taxable income.

The Partnership files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2018, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

Authoritative guidance on accounting for and disclosure of uncertainty in tax positions requires the General Partner to determine whether a tax position of the Partnership is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that as a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018.

**Multi Strategy Master**

For U.S. income tax purposes, Multi Strategy Master is treated as a pass-through entity, which means it is not subject to federal income taxes under current Internal Revenue Service guidelines. However, each investor may be individually liable for income taxes, if any, on its share of the partnership's net taxable income.

Multi Strategy Master trades in senior secured syndicated bank loans for its own account and, as such, non-U.S. Investment Vehicle investors are generally not subject to U.S. tax on such earnings (other than certain withholding taxes indicated below). The Partnership intends to conduct Multi Strategy Master business in such a manner that it does not constitute a U.S. trade or business, nor does it create a taxable presence in any of the jurisdictions in which the Partnership has offices.

Dividends as well as certain interest and other income received by Multi Strategy Master from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by Multi Strategy Master from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced. As of December 31, 2018, a minimal withholding tax liability of \$0.9 million is classified within accrued and other liabilities on the Consolidated Balance Sheet.

**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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Multi Strategy Master applies authoritative guidance which requires management to determine whether a tax position Multi Strategy Master is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the consolidated financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relative taxing authority. Management does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018.

Multi Strategy Master files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, Multi Strategy Master is subject to examination by federal and foreign jurisdictions, where applicable. As of December 31, 2018, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

**Restoration Onshore**

Restoration Onshore is treated as a pass-through entity for tax purposes, which means it is not subject to U.S. income taxes under current Internal Revenue Service or state and local guidelines. Each Partner is individually liable for income taxes, if any, on its share of the Restoration Onshore's net taxable income. Interest, dividends and other income realized by Restoration Onshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Onshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Onshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority.

The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018. Restoration Onshore files tax returns as prescribed by the tax laws of the jurisdictions in which it operates. In the normal course of business, the Partnership is subject to examination by federal, state, local and foreign jurisdictions, where applicable. As of December 31, 2018, the tax years that remain subject to examination by the major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

**Restoration Offshore**

Restoration Offshore is a Cayman Islands exempted company. Under the current laws of the Cayman Islands, there is no income, estate, transfer, sales or other tax payable by Restoration Offshore. Restoration Offshore has elected to be treated as a corporation for U.S. tax purposes and files a protective 1120-F.

The General Partner intends to conduct the business of Restoration Offshore in such a way that Restoration Offshore's activities do not constitute a U.S. trade or business and any income or realized gains earned by Restoration Offshore do not become "effectively connected" with a trade or business carried on in the United States for U.S. federal income tax purposes.

**Highland Capital Management, L.P.**  
**(A Delaware Limited Partnership)**  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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Dividends as well as certain interest and other income received by the master partnership of Restoration Offshore from sources within the United States may be subject to, and reflected net of, United States withholding tax at a rate of 30% for non-U.S. Investment Vehicles. Interest, dividend and other income realized by the master partnership of Restoration Offshore from non-U.S. sources and capital gains realized on the sale of securities of non-U.S. issuers may be subject to withholding and other taxes levied by the jurisdiction in which the income is sourced.

Restoration Offshore applies the authoritative guidance on accounting for and disclosure of uncertainty in tax positions, which requires the General Partner to determine whether a tax position of Restoration Offshore is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. For tax positions meeting the more likely than not threshold, the tax amount recognized in the financial statements is the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement with the relevant taxing authority. The General Partner has determined that there was no effect on the financial statements from the Partnership's application of this authoritative guidance. The General Partner does not expect a significant change in uncertain tax positions during the twelve months subsequent to December 31, 2018. As of December 31, 2018, the tax years that remain subject to examination by major tax jurisdictions under the statute of limitations is from the year 2015 forward (with limited exceptions).

The remaining entities consolidated by the Partnership had no uncertain tax positions which required accrual under U.S. GAAP.

**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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**14. Legal Proceedings**

The Partnership and certain affiliated investment vehicles are defendants in a complaint filed on February 24, 2009 New York state court by UBS Securities LLC and UBS AG, London Branch relating to a CLO warehouse facility with respect to which UBS is attempting to extend liability beyond the two entities that bore sole risk of loss under the governing documents. On February 19, 2010, the court dismissed all claims against the Partnership. UBS since has filed additional claims against the Partnership and certain additional investment vehicles. On July 21, 2011, the First Appellate Division again dismissed two of UBS's four claims against the Partnership, severely limiting the remaining two claims. Additional claims were dismissed in a further appellate ruling issued on October 31, 2017. Certain claims were tried in July 2018 against two Highland-affiliated defendants, but the trial court has neither ruled on those claims nor indicated when it will set UBS's remaining claims for trial. The second trial, if it occurs, will try all claims against the Partnership and certain affiliated investment vehicles.

From time to time the Partnership is party to disputes with disgruntled former employees. One such matter involves a former employee that improperly recorded internal conversations in violation of the Partnership's internal policies and procedures and potentially certain criminal and regulatory provisions. The former employee obtained a \$7.9 million judgment against Highland affiliate Acis Capital Management, L.P. ("Acis"). The employee currently is attempting to collect this judgment through various proceedings in Texas state and federal court, including claims against Highland for receipt of assets from Acis.

In another matter, a Court ruled that a former employee breached his fiduciary duty to the Partnership, owed damages to the Partnership, and ordered the former employee to cease using or disclosing the Partnership's confidential information. Additionally, an award was entered in favor of the employee against a separate incentive compensation entity for an interest that was already escrowed in his name prior to trial and in which he was already vested. The dispute over the amount of his vested interest is on-going. Additionally, the Partnership from time to time must take action to enforce the permanent injunction against the former employee's continuing improper disclosures of the Partnership's confidential information.

The Partnership is engaged in litigation and arbitration with a group of investors relating to the post-financial crisis wind down and distribution of the remaining assets in the Crusader hedge fund vehicle.

The Partnership currently is and has been previously subject to various legal proceedings, many of which have been due to the nature of operating in the distressed loan business in the U.S. The legal process is often the route of last resort to recover amounts due from delinquent borrowers. We currently do not anticipate these proceedings will have a material negative impact to the Partnership.

**15. Subsequent Events**

On March 18, 2019, SSP Holdings, LLC issued a promissory note to the Partnership in the amount of \$2.0 million. The note accrues interest at a rate of 18%.

On March 26, 2019, Trussway Holdings, LLC issued a promissory note to the Partnership in the amount of \$1.0 million. The note accrues interest at a rate of 10%.

**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Notes to Consolidated Financial Statements**  
**December 31, 2018**

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On March 28, 2019, the Partnership distributed equity to its partners in the aggregate amount of \$3.7 million.

On March 28, 2019, the Partnership received a \$3.7 million pay down on the outstanding Contribution Agreement.

Over the course of 2019, through the report date, HCMFA issued promissory notes to the Partnership in the aggregate amount of \$7.4 million. The notes accrue interest at a rate of 2.39%.

The Partnership has performed an evaluation of subsequent events through June 3, 2019, which is the date the consolidated financial statements were available to be issued, and has determined that there are no other material subsequent events that would require disclosure in the Partnership's consolidated financial statements.



**Highland Capital Management, L.P.**  
**(A Delaware Limited Partnership)**  
**As of And Year Ended December 31, 2018**  
**Supplemental Information**

**Highland Capital Management, L.P.**  
**(A Delaware Limited Partnership)**  
**Supplemental Consolidating Balance Sheet**  
**December 31, 2018**

<i>(in thousands)</i>	<b>Highland Capital Management, L.P.</b>	<b>All Other Consolidated Entities</b>	<b>Eliminations</b>	<b>Total Consolidated</b>
<b>Assets</b>				
Cash and cash equivalents	\$ 2,567	\$ 2,467	\$ -	\$ 5,034
Investments at fair value (cost \$922,027)	161,939	683,247	-	845,186
Equity method investees	121,936	-	(121,936)	-
Management and incentive fees receivable	2,242	158	(7)	2,393
Due from brokers	-	598	-	598
Other assets	8,421	5,660	(4,826)	9,255
Notes and other amounts due from affiliates	176,963	-	(3,565)	173,398
Intangible assets	-	3,022	-	3,022
Fixed assets and leasehold improvements, net of accumulated depreciation of \$11,197	4,538	43	-	4,581
<b>Total assets</b>	<b>\$ 478,606</b>	<b>\$ 695,195</b>	<b>\$ (130,334)</b>	<b>\$ 1,043,467</b>
<b>Liabilities and partners' capital</b>				
<b>Liabilities</b>				
Accounts payable	\$ 4,838	\$ 145	\$ -	\$ 4,983
Securities sold, not yet purchased (proceeds \$26,135)	-	32,357	-	32,357
Withdrawals payable	-	57,009	-	57,009
Due to affiliates	4,542	-	(4,542)	-
Due to brokers	31,194	86,108	(742)	116,560
Due to brokers for securities purchased, not yet settled	1,640	-	-	1,640
Accrued and other liabilities	35,574	4,276	396	40,246
Notes payable	16,722	42,540	(3,510)	55,752
Investment liabilities	12,135	33,957	-	46,092
<b>Total liabilities</b>	<b>106,645</b>	<b>256,392</b>	<b>(8,398)</b>	<b>354,639</b>
Non-controlling interest	-	316,867	-	316,867
Commitments and contingencies				
<b>Partners' capital</b>	<b>371,961</b>	<b>121,936</b>	<b>(121,936)</b>	<b>371,961</b>
<b>Total liabilities and partners' capital</b>	<b>\$ 478,606</b>	<b>\$ 695,195</b>	<b>\$ (130,334)</b>	<b>\$ 1,043,467</b>

**Highland Capital Management, L.P.**  
**(A Delaware Limited Partnership)**  
**Supplemental Consolidating Statement of Income**  
**Year Ended December 31, 2018**

<i>(in thousands)</i>	Highland Capital Management, L.P.	All Other Consolidated Entities	Eliminations	Total Consolidated
<b>Revenue:</b>				
Management fees	\$ 35,264	\$ 1,336	\$ -	\$ 36,600
Interest and investment income	4,857	10,974	-	15,831
Incentive fees	17	53	-	70
Shared services fees	9,187	-	-	9,187
Other income	1,038	1,584	-	2,622
Total revenue	<u>50,363</u>	<u>13,947</u>	<u>-</u>	<u>64,310</u>
<b>Expenses:</b>				
Compensation and benefits	33,670	805	-	34,475
Professional fees	14,624	3,055	-	17,679
Interest expense	1,695	3,975	-	5,670
Marketing and advertising expense	2,413	-	-	2,413
Depreciation and amortization	1,304	13	-	1,317
Investment and research consulting	1,082	-	-	1,082
Bad debt expense	7,862	-	-	7,862
Other operating expenses	6,786	3,241	-	10,027
Total expenses	<u>69,436</u>	<u>11,089</u>	<u>-</u>	<u>80,525</u>
<b>Other Income/(Expense):</b>				
Other income	9,816	10	-	9,826
Impairment on intangible assets	(2,830)	-	-	(2,830)
Total other income	<u>6,986</u>	<u>10</u>	<u>-</u>	<u>6,996</u>
Income/(loss) before investment and derivative activities	<u>(12,087)</u>	<u>2,868</u>	<u>-</u>	<u>(9,219)</u>
<b>Realized and unrealized gain/(loss) on investments and derivatives:</b>				
Net realized gain/(loss) on investments and derivatives	13,397	(44,914)	-	(31,517)
Net change in unrealized loss on investments and derivatives	(406)	(93,349)	-	(93,755)
Net realized and unrealized loss on investments and derivatives	<u>12,991</u>	<u>(138,263)</u>	<u>-</u>	<u>(125,272)</u>
Net unrealized losses from equity method investees	(74,082)	-	74,082	-
Net loss	(73,178)	(135,395)	74,082	(134,491)
Net loss attributable to non-controlling interest	-	(61,313)	-	(61,313)
Net loss attributable to Highland Capital Management, L.P.	<u>\$ (73,178)</u>	<u>\$ (74,082)</u>	<u>\$ 74,082</u>	<u>\$ (73,178)</u>

**Highland Capital Management, L.P.**  
**(A Delaware Limited Partnership)**  
**Supplemental Unconsolidated Balance Sheet**  
**December 31, 2018**

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(in thousands)

**Assets**

Current assets:

Cash and cash equivalents	\$ 2,567
Investments at fair value (cost \$263,008*)	259,460
Equity method investees	24,415
Management and incentive fees receivable	2,242
Intangible assets	8,421
Notes and other amounts due from affiliates	176,963
Fixed assets and leasehold improvements, net of accumulated depreciation of \$11,177	4,538

<b>Total assets</b>	<u><u>\$ 478,606</u></u>
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**Liabilities and partners' capital**

**Liabilities**

Accounts payable	\$ 4,838
Due to affiliate	4,542
Due to brokers	31,194
Due to brokers for securities purchased not yet settled	1,640
Accrued and other liabilities	35,574
Notes payable	16,722
Investment liabilities	12,135
 Total liabilities	 <u>106,645</u>

Partners' capital	371,961
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<b>Total liabilities and partners' capital</b>	<u><u>\$ 478,606</u></u>
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\*Investments, at fair value includes \$97.5 million of limited partnership interest ownership of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

The above information was derived from the audited December 31, 2018 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited financial statements.

**Highland Capital Management, L.P.**  
(A Delaware Limited Partnership)  
**Supplemental Unconsolidated Statement of Income**  
**Year Ended December 31, 2018**

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(in thousands)

**Revenue:**

Management fees	\$ 35,264
Incentive fees	17
Shared services fees	9,187
Interest and investment income	4,857
Miscellaneous income	1,038
	<hr/>
Total revenue	<u>50,363</u>

**Expenses:**

Compensation and benefits	33,670
Professional fees	14,624
Marketing and advertising expense	2,413
Interest expense	1,695
Depreciation and amortization	1,304
Investment and research consulting	1,082
Bad debt expense	7,862
Other operating expenses	6,786
	<hr/>
Total expenses	<u>69,436</u>

**Other Income/(Expense):**

Other income	9,816
Impairment on intangible assets	(2,830)
	<hr/>
Total other income	6,986

Loss before investment activities	(12,087)
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**Realized and unrealized gains/losses on investments:**

Net realized gain on sale of investments	13,397
Net change in unrealized loss on investments*	(56,529)
	<hr/>
Total realized and unrealized loss on investments	<u>(43,132)</u>

Loss from equity method investees:	<u>(17,959)</u>
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<b>Net loss</b>	<u><u>\$ (73,178)</u></u>
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\*Net change in unrealized gain on investments includes \$56.1 million of unrealized loss from holdings of limited partnership interests of Consolidated Investment Funds, which are discussed in Footnote 2. These entities are consolidated because the Partnership controls the general partner of the respective entities and is responsible for the daily operations of the entities.

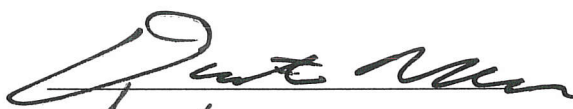
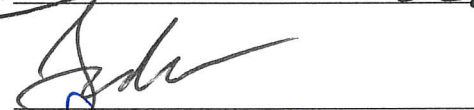
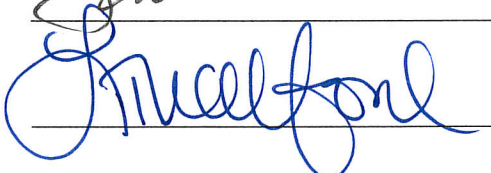
The above information was derived from the audited December 31, 2018 consolidated financial statements of Highland Capital Management, L.P. This information should be read in conjunction with such audited consolidated financial statements.

## **EXHIBIT 4**

**HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.**

**INCUMBENCY CERTIFICATE**


I am the sole Director of STRAND ADVISORS XVI, INC., a Delaware corporation (the “*General Partner*”), the general partner of **HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.**, a Delaware limited partnership (the “*Partnership*”). In that capacity, I certify that the persons listed below have been duly appointed and qualified as, and currently are, officers of the General Partner of the Partnership. I also certify that each person listed below holds the position that is listed opposite his or her name in the General Partner, and that the signatures attached are the genuine signatures of the persons indicated. I also certify that in their capacity as officers of the General Partner, the persons listed below are authorized to execute any and all agreements on behalf of the General Partner in its capacity as the general partner of the Partnership. I further certify that in their capacity as officers of the General Partner, the persons listed below are authorized to give any party on behalf of the Partnership all notices, orders, directions, or instructions (including but not limited to written, facsimile, or oral funds transfer instructions) in connection with any transaction to which the Partnership is or in the future may be a party to in any capacity.

<u>Name of Officer</u>	<u>Title</u>	<u>Signature</u>
Dustin Norris	Executive Vice President	
Frank Waterhouse	Treasurer	
Lauren Thedford	Secretary	

WITNESS my hand to be effective as of the 11<sup>th</sup> day of April, 2019.

HIGHLAND CAPITAL MANAGEMENT FUND  
ADVISORS, L.P.

By: Strand Advisors XVI, Inc., its general partner

By:   
James D. Dondero, Sole Director

## **EXHIBIT 5**



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**From:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>  
**Sent:** Tuesday, October 6, 2020 6:19 PM  
**To:** Lauren Thedford <[LThedford@HighlandCapital.com](mailto:LThedford@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>; Kristin Hendrix <[KHendrix@HighlandCapital.com](mailto:KHendrix@HighlandCapital.com)>  
**Cc:** Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>; Jason Post <[JPost@HighlandCapital.com](mailto:JPost@HighlandCapital.com)>; Dustin Norris <[DNorris@NexPointSecurities.com](mailto:DNorris@NexPointSecurities.com)>; Will Mabry <[WMabry@HighlandCapital.com](mailto:WMabry@HighlandCapital.com)>  
**Subject:** RE: 15(c) Follow up (10\_2\_20).DOCX

No shared services outstanding. The HCMFA note is a demand note. The NexPoint note Kristin can give the end term. There was an agreement between HCMLP and HCMFA the earliest they could demand is May 2021. The attorneys think that BK doesn't change that but don't know for sure at the end of the day. The response should include as I covered in the Board meeting that both entities have the full faith and backing from Jim Dondero and to my knowledge that hasn't changed.

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**From:** Lauren Thedford <[LThedford@HighlandCapital.com](mailto:LThedford@HighlandCapital.com)>  
**Sent:** Tuesday, October 6, 2020 6:14 PM  
**To:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>; Kristin Hendrix <[KHendrix@HighlandCapital.com](mailto:KHendrix@HighlandCapital.com)>  
**Cc:** Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>; Jason Post <[JPost@HighlandCapital.com](mailto:JPost@HighlandCapital.com)>; Dustin Norris <[DNorris@NexPointSecurities.com](mailto:DNorris@NexPointSecurities.com)>; Will Mabry <[WMabry@HighlandCapital.com](mailto:WMabry@HighlandCapital.com)>  
**Subject:** RE: 15(c) Follow up (10\_2\_20).DOCX

I see the below from the 6/30 financials –

NPA: Due to HCMLP and affiliates as of June 30, 2020 - 23,683,000  
HCMFA: Due to HCMLP as of June 30, 2020 - 12,286

I expect the follow-up question will be regarding terms and structure of the notes and whether any of the shared services invoices are outstanding.

Draft answer below.

Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

**Response:** As of June 30, 2020, \$23,683,000 remains outstanding to HCMLP and its affiliates from NexPoint and \$12,286,000 remains outstanding to HCMLP from HCMFA. The Notes between HCMLP and NexPoint come due on [DATE]. The Notes between HCMLP and HCMFA come due on [DATE]. All amounts owed by each of NexPoint and HCMFA pursuant to the shared services arrangement with HCMLP have been paid as of [DATE].

---

**From:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>  
**Sent:** Tuesday, October 6, 2020 6:05 PM  
**To:** Lauren Thedford <[LThedford@HighlandCapital.com](mailto:LThedford@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>; Kristin Hendrix <[KHendrix@HighlandCapital.com](mailto:KHendrix@HighlandCapital.com)>  
**Cc:** Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>; Jason Post <[JPost@HighlandCapital.com](mailto:JPost@HighlandCapital.com)>; Dustin Norris

<[DNorris@NexPointSecurities.com](mailto:DNorris@NexPointSecurities.com)>; Will Mabry <[WMabry@HighlandCapital.com](mailto:WMabry@HighlandCapital.com)>

**Subject:** RE: 15(c) Follow up (10\_2\_20).DOCX

It's on the balance sheet that was provided to the board as part of the 15c materials.

---

**From:** Lauren Thedford <[LThedford@HighlandCapital.com](mailto:LThedford@HighlandCapital.com)>

**Sent:** Tuesday, October 6, 2020 6:04 PM

**To:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>; Kristin Hendrix <[KHendrix@HighlandCapital.com](mailto:KHendrix@HighlandCapital.com)>

**Cc:** Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>; Jason Post <[JPost@HighlandCapital.com](mailto:JPost@HighlandCapital.com)>; Dustin Norris <[DNorris@NexPointSecurities.com](mailto:DNorris@NexPointSecurities.com)>; Will Mabry <[WMabry@HighlandCapital.com](mailto:WMabry@HighlandCapital.com)>

**Subject:** RE: 15(c) Follow up (10\_2\_20).DOCX

Could you provide the amounts?

Thanks

---

**From:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>

**Sent:** Tuesday, October 6, 2020 5:53 PM

**To:** Lauren Thedford <[LThedford@HighlandCapital.com](mailto:LThedford@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>; Kristin Hendrix <[KHendrix@HighlandCapital.com](mailto:KHendrix@HighlandCapital.com)>

**Cc:** Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>; Jason Post <[JPost@HighlandCapital.com](mailto:JPost@HighlandCapital.com)>; Dustin Norris <[DNorris@NexPointSecurities.com](mailto:DNorris@NexPointSecurities.com)>; Will Mabry <[WMabry@HighlandCapital.com](mailto:WMabry@HighlandCapital.com)>

**Subject:** RE: 15(c) Follow up (10\_2\_20).DOCX

Yes

---

**From:** Lauren Thedford <[LThedford@HighlandCapital.com](mailto:LThedford@HighlandCapital.com)>

**Sent:** Tuesday, October 6, 2020 5:52 PM

**To:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>; Kristin Hendrix <[KHendrix@HighlandCapital.com](mailto:KHendrix@HighlandCapital.com)>

**Cc:** Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>; Jason Post <[JPost@HighlandCapital.com](mailto:JPost@HighlandCapital.com)>; Dustin Norris <[DNorris@NexPointSecurities.com](mailto:DNorris@NexPointSecurities.com)>; Will Mabry <[WMabry@HighlandCapital.com](mailto:WMabry@HighlandCapital.com)>

**Subject:** RE: 15(c) Follow up (10\_2\_20).DOCX

Good evening Frank, Klos, Kristin – please advise on the below in connection with the Board's follow-up request. Thanks!

Are there any material outstanding amounts currently payable or due in the future (e.g., notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

---

**From:** Lauren Thedford

**Sent:** Friday, October 2, 2020 2:50 PM

**To:** Thomas Surgent <[TSurgent@HighlandCapital.com](mailto:TSurgent@HighlandCapital.com)>

**Cc:** Jason Post <[JPost@HighlandCapital.com](mailto:JPost@HighlandCapital.com)>; Dustin Norris <[DNorris@Nexpointsecurities.com](mailto:DNorris@Nexpointsecurities.com)>; Will Mabry <[WMabry@HighlandCapital.com](mailto:WMabry@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

**Subject:** FW: 15(c) Follow up (10\_2\_20).DOCX

Thomas – please see attached (and reproduced below) additional 15c follow-up questions from the Board.

1. Please provide, to the extent practicable, the contingency plans with respect to the services provided under the Shared Services Agreements in the event that the outcome of the HCMLP bankruptcy proceedings were to impact the current servicing structure. For example, has the Advisers considered any outside service providers if necessary?

Note prior question and response on related topic:

With respect to the Estimated Adviser Profitability chart (Item A.2.a in the Board book), is the "Shared Services" line the only expenses attributable to HCMLP? Has any work been done or consideration been given to the solicitation of a third party bid on performing these services or bringing them in house to HCMFA?

Response: Shared services, along with a portion of the investment professional compensation & benefits lines, are the only allocations attributable to HCMLP employees' support of the Advisers. HCMFA does not have the resources to bring these services in-house at this time, but given that HCMLP staffing levels for the provision of the shared services have remained fairly consistent and HCMLP remains capable of providing such shared services on economically reasonable terms, outsourced third-party bids have not been solicited at this time.

2. Are there any material outstanding amounts currently payable or due in the future (e.g., notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?
3. The Board notes the provision of the updated list of current co-investments provided by HCMFA/NexPoint Advisors and the Advisers' discussion, including the senior-level team in place, to address any potential conflicts of interest matters. With respect to the compliance function, please confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. Are there any other potential conflicts outside of the specific co-investment matters identified?

Please let me know if you would like me to set up a call on Monday to discuss.

---

**From:** Louizos, Stacy <[SLouizos@BlankRome.com](mailto:SLouizos@BlankRome.com)>

**Sent:** Friday, October 2, 2020 1:54 PM

**To:** Dustin Norris <[DNorris@NexPointSecurities.com](mailto:DNorris@NexPointSecurities.com)>; Lauren Thedford <[LThedford@HighlandCapital.com](mailto:LThedford@HighlandCapital.com)>

**Cc:** Jason Post <[JPost@HighlandCapital.com](mailto:JPost@HighlandCapital.com)>; Zornada, George <[George.Zornada@klgates.com](mailto:George.Zornada@klgates.com)>; [Charles.Miller@klgates.com](mailto:Charles.Miller@klgates.com); [Jon-Luc.Dupuy@klgates.com](mailto:Jon-Luc.Dupuy@klgates.com)

**Subject:** 15(c) Follow up (10\_2\_20).DOCX

Hi Dustin and Lauren—Please see attached follow up questions from the Trustees after the latest Board call. Happy to have a call to discuss if helpful.

Best,  
Stacy

**Stacy H. Louizos** | BLANKROME

1271 Avenue of the Americas | New York, NY 10020

O: 212.885.5147 | F: 917.332.3028 | [slouizos@blankrome.com](mailto:slouizos@blankrome.com)

M: 203.918.3666

\*\*\*\*\*  
\*

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**EXHIBIT 6**

**TO BE FILED**

**UNDER SEAL**

# **EXHIBIT 7**

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**From:** Kristin Hendrix  
**Sent:** Thursday, May 02, 2019 12:33 PM  
**To:** Hayley Eliason <[HEliason@HighlandCapital.com](mailto:HEliason@HighlandCapital.com)>; Blair Roeber <[BRoeber@HighlandCapital.com](mailto:BRoeber@HighlandCapital.com)>  
**Subject:** FW: HCMLP to HCMFA loan

Blair,

Here is a copy of the note for support.

Hayley – FYI for your loan tracker.

---

**From:** David Klos  
**Sent:** Thursday, May 02, 2019 11:24 AM  
**To:** Corporate Accounting  
**Subject:** HCMLP to HCMFA loan

Blair,  
Please send \$2,400,000 from HCMLP to HCMFA. This is a new interco loan. Kristin, can you or Hayley please prep a note for execution. I'll have further instructions later today, but please process this payment as soon as possible.

DAVID KLOS | CONTROLLER



300 Crescent Court | Suite 700 | Dallas, Texas 75201  
C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147  
[dklos@highlandcapital.com](mailto:dklos@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)

## PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

D-CNL003778



7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



---

FRANK WATERHOUSE

## **EXHIBIT 8**

**From:** Kristin Hendrix  
**Sent:** Friday, May 03, 2019 3:06 PM  
**To:** Corporate Accounting <[CorporateAccounting@hcmlp.com](mailto:CorporateAccounting@hcmlp.com)>  
**Subject:** HCMLP Loan to HCMFA

Blair,

Please set up a wire from HCMLP to HCMFA for \$5M as a new loan (\$4.4M should be coming in from Jim soon).

Hayley, please add this to your loan tracker. I will paper the loan.

Thanks,

Kristin Hendrix, CPA | Manager, Corporate Accounting



300 Crescent Court | Suite 700 | Dallas, Texas 75201  
O: 972.628.4127 | F: 972.628.4147

[khendrix@highlandcapital.com](mailto:khendrix@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)

Highland Capital Management, LP



## **EXHIBIT 9**

## PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

D-CNL003764

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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FRANK WATERHOUSE

# **EXHIBIT 10**



**TO:** Board of Trustees or Board of Directors (as the case may be) (collectively, the “Board”) of Highland Funds I, Highland Funds II, Highland Income Fund, Highland Global Allocation Fund, NexPoint Strategic Opportunities Fund, NexPoint Real Estate Strategies Fund and NexPoint Capital, Inc.

**FROM:** Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. and NexPoint Securities, Inc.

**RE:** Supplemental 15(c) Information Request

**DATE:** October 23, 2020

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Pursuant to your supplemental request dated October 2, 2020, Highland Capital Management Fund Advisors, L.P. (“HCMFA”), NexPoint Advisors, L.P. (“NexPoint”, and with HCMFA, each, an “Adviser”, and together, the “Advisers”) and NexPoint Securities, Inc. (“NSI” the “Distributor”) submit the following supplemental information to the Board in order to assist the Board in fulfilling its obligations under Section 15(c) of the Investment Company Act of 1940, as amended (the “1940 Act”), and to assist in the Board’s consideration of the investment advisory, and other contractual arrangements, for the funds listed on Appendix A (each, a “Fund” and, collectively, the “Funds”). References to the 2020 15(c) Response dated August 13, 2020 and the supplemental response dated September 17-18, 2020 are referred to as the “2020 15(c) Response” and “2020 Supplemental 15(c) Response”, respectively.

Your requests have been noted below, each of which is followed by our response. Unless otherwise specified, reference documents are located on Director’s Desk at the following location: Home > Documents > Corporate Documents > 15c Reference Documents.

**A. Nature, Extent and Quality of Services**

1. Please provide, to the extent practicable, the contingency plans with respect to the services provided under the Shared Services Agreements in the event that the outcome of the HCMLP bankruptcy proceedings were to impact the current servicing structure. For example, has the Advisers considered any outside service providers if necessary?

**Response:** As a result of the Highland Capital Management, L.P. (“HCMLP”) bankruptcy, NexPoint’s senior management’s plan as a backup/contingency plan is to extend employment offers to the vast majority of HCMLP’s employees by December 31, 2020. This will help ensure that there is no disruption in services to the Funds. Once we have further details of this we will advise. In the interim, the plan is to continue with existing shared services.

Representatives of HCMLP and NexPoint will be available to discuss the structure of these contingency plans, relevant employees, and communications



to current employees regarding these matters. Representatives of HCMLP and NexPoint are working to facilitate the shared use of and/or transfer of services such as the intranet, shared computer drives, and third-party contracts.

2. Are there any material outstanding amounts currently payable or due in the future (*e.g.*, notes) to HLCMLP by HCMFA or NexPoint Advisors or any other affiliate that provide services to the Funds?

**Response:** As of June 30, 2020, \$23,683,000 remains outstanding to HCMLP and its affiliates from NexPoint and \$12,286,000 remains outstanding to HCMLP from HCMFA. The Note between HCMLP and NexPoint comes due on December 31, 2047. The earliest the Note between HCMLP and HCMFA could come due is in May 2021. All amounts owed by each of NexPoint and HCMFA pursuant to the shared services arrangement with HCMLP have been paid as of the date of this letter. The Adviser notes that both entities have the full faith and support of James Dondero.

3. The Board notes the provision of the updated list of current co-investments provided by HCMFA/NexPoint Advisors and the Advisers' discussion, including the senior-level team in place, to address any potential conflicts of interest matters. With respect to the compliance function, please confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. Are there any other potential conflicts outside of the specific co-investment matters identified?

**Response:** The Advisers confirm that the Funds' Chief Compliance Officer overall will continue in his usual role with respect to the Funds. As of October 14, 2020, the Funds' Chief Compliance Officer is an employee of NexPoint. Please see Exhibit A for a list of current co-investments and cross-held positions where a future conflict may arise together with Exhibit B for the list of non-HCMLP employees available to assist the Board in any future conflicts.

**Exhibit A**

**Co-Investment Analysis**

Highland Capital Management, LP ("HCMLP")  
 Condensed Co-Investment Analysis  
 As of 9/30/20

Condensed Co-Investments <sup>1</sup>

	Investment	HCMLP MV	Funds Managed by HCMLP MV	Retail Funds	Non-HCMLP Investment Coverage
1	Metro-Goldwyn-Mayer Inc. Class A Common Stock	\$13,085,369	\$418,019,027	\$61,820,908	Dondero
2	CCS Medical, Inc. (Chronic Care) Loan 1st Lien @ PRIME 7% 7/31/2021	-	121,166,994	47,510,599	Dondero
3	TerreStar Corporation Term Loan A @ LIBOR 11% 2/28/2022	-	49,742,043	40,159,485	Dondero
4	VST US Equity	-	41,904,280	24,381,982	Sowin
5	NXRT	10,799,003	2,228,410	21,256,955	McGraner
6	Grayson CLO, Ltd. Class II Preference Shares	-	2,201,500	18,861,050	Sowin
7	NHT/U CN	2,028,793	-	18,524,594	McGraner
8	NHF	2,208,872	2,954,619	15,808,648	Dondero
9	Advantage Sales & Marketing Inc. Term Loan (Second Lien) @ LIBOR 6.5% 7/25/2022	-	1,940,140	13,784,695	Sowin
10	Procera Networks, Inc. (aka Sandvine Corp) Initial Term Loan (First Lien) @ LIBOR 4.5% 10/3	-	1,367,373	13,681,487	Sowin
11	Gruden Acquisition, Inc. (aka Quality Distribution) ITL (First Lien) @ LIBOR 5.5% 8/18/2022	-	2,568,463	11,124,738	Sowin
12	Westchester CLO, Ltd Class I Preference Shares 144A	-	3,373,333	10,888,813	Sowin
13	HRTX	-	81,510	10,686,168	Dondero
14	Vistra Energy Corp. (fka TCEH Corp.) TXU TRA rights	-	3,494,825	10,476,054	Dondero
15	American Banknote Common	693,467	-	1,843,371	Dondero
16	American Airlines Escrow	154,650	630,365	1,444,839	Dondero
17	Ginn LA Conduit Lender, Inc. 1st Lien A CL Deposit @ PRIME 4.5% 6/8/2011	68,860	812,716	846,955	Sowin
18	TerreStar Corporation TL C @ LIBOR 11% 2/28/2022	-	25,418	553,282	Dondero
19	CCS Medical, Inc. (Chronic Care) Common	-	6,008	5,797	Dondero
	<b>Sub-Total</b>	<b>\$29,039,013</b>	<b>\$652,517,024</b>	<b>\$323,660,869</b>	

Additional HCMLP Ownership of Retail Funds (non-co-investments) <sup>2</sup>

	Investment	HCMLP MV	Retail Fund MV	Funds Managed by HCMLP MV
	Highland Opportunistic Credit Fund (HNRZX)	\$2,911,923	-	-
	NexPoint Real Estate Strategies Fund (NRSZX)	663,982	-	-
	<b>Sub-Total</b>	<b>\$3,575,905</b>	<b>\$0</b>	<b>\$0</b>

**Footnote:**

1 - Listing includes the following: 1) all investments held by both HCMLP and retail funds, regardless of materiality 2) investments for which retail funds hold \$10 million or greater in the aggregate and are also held by funds advised by HCMLP 3) investments for which retail funds hold ownership less than \$10 million in the aggregate, the position is private and fair valued, and are also held by funds advised by HCMLP.

2 - 'Additional HCMLP Ownership of Retail Funds' does not reflect other immaterial holdings of investments below \$5,000.



**Exhibit B****Non-HCMLP Employees**

<b>Name</b>	<b>Role</b>	<b>Current Title</b>	<b>Employed By</b>
Jim Dondero	Senior Investment Team Member	Partner	NPA
Jason Post	Chief Compliance Officer	Chief Compliance Officer	NPA
Joe Sowin	Senior Investment Team Member	Co-CIO and Head of Global Equity Trading	HCMFA
Brad Heiss	Senior Investment Team Member	Managing Director	HCMFA
Matt McGraner	Senior Investment Team Member	Managing Director	NPA
Dustin Norris	Fund Officer/Liaison	Head of Distribution and Chief Product Strategist	NPA
DC Sauter	Legal	General Counsel	NPA
Eric Holt	Compliance	Chief Compliance Officer, Affiliated Broker Dealers	NSI
David Willmore	Accounting/Operations	Senior Manager, Real Estate Accounting	NXRT
Paul Richards	Valuation	Director, Real Estate	NPA
Jackie Graham	PR/Marketing	Investor Relations Manager	NPA

HCMFA Highland Capital Management Fund Advisors, L.P.  
NPA NexPoint Advisors, L.P.  
NSI NexPoint Securities, Inc.  
NXRT NexPoint Residential Trust, Inc.

## Appendix A

### Open-End Funds

#### Highland Funds I:

1. Highland Healthcare Opportunities Fund
2. Highland/iBoxx Senior Loan ETF
3. Highland Opportunistic Credit Fund (*in liquidation*)
4. Highland Merger Arbitrage Fund

#### Highland Funds II:

5. Highland Small-Cap Equity Fund
6. Highland Socially Responsible Equity Fund
7. Highland Fixed Income Fund (*sub-advised*)
8. Highland Total Return Fund (*sub-advised*)

### Closed-End Funds

9. NexPoint Capital, Inc.
  - a. BDC REIT Sub, LLC (*REIT Subsidiary*)
10. NexPoint Strategic Opportunities Fund
  - a. NexPoint Real Estate Opportunities, LLC (*REIT Subsidiary*)
  - b. NexPoint Real Estate Capital, LLC (*REIT Subsidiary*)
11. Highland Income Fund
  - a. HFRO Sub, LLC (*Credit Subsidiary*)
  - b. NFRO REIT Sub, LLC (*REIT Subsidiary*)
12. Highland Global Allocation Fund
  - a. GAF REIT, LLC (*REIT Subsidiary*)

### Interval Funds:

13. NexPoint Real Estate Strategies Fund
  - a. NRESF REIT Sub, LLC (*REIT Subsidiary*)

# **EXHIBIT 11**

# EXHIBIT 20





John Y. Bonds, III  
State Bar No. 02589100  
Clay M. Taylor  
State Bar No. 24033261  
Bryan C. Assink  
State Bar No. 24089009  
BONDS ELLIS EPPICH SCHAFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile

Deborah Deitsch-Perez  
State Bar No. 24036072  
Michael P. Aigen  
State Bar No. 24012196  
STINSON LLP  
3102 Oak Lawn Avenue, Suite 777  
Dallas, Texas 75219  
(214) 560-2201 telephone  
(214) 560-2203 facsimile

ATTORNEYS FOR DEFENDANT JAMES DONDERO

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

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

---

**HIGHLAND CAPITAL MANAGEMENT, L.P.,** §  
§  
**Plaintiff.** §  
**v.** § **Adversary No. 21-03003-sgj**  
§  
**JAMES D. DONDERO,** §  
§  
**Defendant.** §

---

**DEFENDANT JAMES DONDERO’S OBJECTIONS AND ANSWERS  
TO HIGHLAND CAPITAL MANAGEMENT, L.P.’S  
SECOND SET OF INTERROGATORIES**

TO: Highland Capital Management, L.P., by and through its attorneys of record, Zachery Z. Annable, Hayward PLLC, 10501 N. Central Expy., Ste. 106, Dallas, Texas 75231.

Defendant James Dondero (“Defendant” or “Dondero”) serves his Objections and Answers to Debtor Highland Capital Management, L.P.’s (“Debtor” or “Highland”) Second Set of Interrogatories (“Requests”), as follows:

Dated: May 7, 2021

Respectfully submitted,

/Deborah Deitsch-Perez

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**ATTORNEYS FOR DEFENDANT JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on May 7, 2021, a true and correct copy of the foregoing document was served via email on counsel for the Debtor.

*/s/ Michael P. Aigen*

Michael P. Aigen

**OBJECTIONS AND ANSWERS<sup>1</sup>**

**INTERROGATORY NO. 1:** Identify the “conditions subsequent” referred to in paragraph 40 of the Amended Answer.

**ANSWER:**

The conditions subsequent referred to in paragraph 40 of the Amended Answer refer to the disposition of the portfolio company interests managed and/or owned, directly or indirectly, by Highland and/or its affiliates or managed funds on a favorable basis or on a basis wholly outside Dondero’s control.

**INTERROGATORY NO. 2:** With respect to each Note, identify:

(a) the person who provided legal advice to James Dondero in connection with the negotiation, drafting, and execution of each Note, if any;

(b) the person who provided legal advice to the Debtor in connection with the negotiation, drafting, and execution of each Note, if any; and

(c) the person who drafted each Note.

**ANSWER:**

Dondero objects to this interrogatory to the extent that it seeks privileged information. Subject to this objection, Dondero responds as follows:

Dondero does not know who specifically drafted the Notes, however, he believes they were drafted by an individual in either the Highland legal or finance department.

**INTERROGATORY NO. 3:** Identify the “mutual obligation” referred to in paragraph 41 of the Amended Answer, including (a) the date the mutual obligation was incurred, (b) any documents referring to or reflecting the mutual obligation, (c) the amount of the mutual obligation, (d) any demands made by James Dondero to the Debtor for payment on the mutual obligation.

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<sup>1</sup> Defendant makes these responses subject in all respects to his Motion for Withdrawal of the Reference [Adv. Dkt. No. 21] and the Motion to Stay Pending the Motion to Withdraw the Reference of Plaintiff’s Complaint [Adv. Dkt. No. 22] filed on April 15, 2021. For the reasons stated in the motions, Defendant believes that the reference should be withdrawn and this proceeding stayed while the motion to withdraw the reference is considered. Defendant does not waive, but instead hereby preserves, his right to a jury trial and all rights and requests for relief asserted in the motions. Defendant does not consent to the Bankruptcy Court determining this proceeding or entering final orders or judgments in this proceeding. Defendant requests that the reference be withdrawn and that the District Court adjudicate this proceeding.

**ANSWER:**

Defendant is not pursuing in this action the mutual obligation referred to in paragraph 41 of the Amended Answer, which refers to potential contribution and/or indemnity claims that are largely unliquidated and contingent, and which Dondero cannot identify until all potential claims are resolved.

**INTERROGATORY NO. 4:** Identify every person James Dondero believes has personal knowledge of the alleged mutual obligation referred to in paragraph 41 of the Amended Answer.

**ANSWER:**

James Dondero

Frank Waterhouse

Mark Okada

John Honis

Scott Ellington

**INTERROGATORY NO. 5:** Identify the “debt” referred to in paragraph 41 of the Amended Answer, including (a) the date the debt was incurred, (b) any documents referring to or reflecting the debt, (c) the amount of the mutual obligation, (d) any demands made by James Dondero to the Debtor for payment on the debt.

**ANSWER:**

See Response to Interrogatory No. 3.

**INTERROGATORY NO. 6:** Identify every person James Dondero believes has personal knowledge of the alleged debt referred to in paragraph 41 of the Amended Answer.

**ANSWER:**

See Response to Interrogatory No. 3.

**INTERROGATORY NO. 7:** Identify each provision of each Note that James Dondero contends is ambiguous.


**ANSWER:**

Dondero contends that each Note as a whole is ambiguous because it refers to additional agreements without specifying them.

**VERIFICATION**

STATE OF TEXAS        )  
                                  )  
COUNTY OF DALLAS    )

On this day, James D. Dondero appeared before me, the undersigned notary public, and upon his oath, certified that he had read Defendant's Objections and Answers to Highland Capital Management, L.P.'s Second Set of Interrogatories and that the facts stated therein are within his personal knowledge and are true and correct.

  
\_\_\_\_\_  
JAMES D. DONDERO

SWORN TO and SUBSCRIBED before me by James D. Dondero on the 7th day of May, 2021.

\_\_\_\_\_  
Notary Public in and for the State of Texas

## **EXHIBIT 12**

1 BURGER

2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF TEXAS  
4 DALLAS DIVISION

5 -----  
6 IN RE:

7 Chapter 11  
8 HIGHLAND CAPITAL  
9 MANAGEMENT, L.P., CASE NO.  
10 19-34054-SGI11

11 Debtor.

12 -----  
13 HIGHLAND CAPITAL MANAGEMENT, L.P.,

14 Plaintiff,

15 vs.

16 Adversary  
17 Proceeding No.

18 21-03000-sgj

19 HIGHLAND CAPITAL MANAGEMENT  
20 FUND ADVISORS, L.P.; NEXPOINT  
21 ADVISORS, L.P.; HIGHLAND  
22 INCOME FUND; NEXPOINT  
23 STRATEGIC OPPORTUNITIES FUND;  
24 NEXPOINT CAPITAL, INC.; and  
25 CLO HOLDCO, LTD.,

Defendants.  
-----

REMOTE DEPOSITION OF

PEET BURGER

July 30, 2021

Reported by: Susan S. Klinger, RMR-CRR, CSR

Job No. 197393



Page 2

1 BURGER  
 2  
 3  
 4 July 30, 2021  
 5 10:01 a.m.  
 6  
 7  
 8  
 9 Remote Deposition of PEET BURGER, held  
 10 before Susan S. Klinger, a Registered Merit  
 11 Reporter and Certified Realtime Reporter of the  
 12 State of Texas.  
 13  
 14  
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 16  
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 18  
 19  
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 21  
 22  
 23  
 24  
 25

Page 4

1 BURGER  
 2 I N D E X  
 3  
 4 WITNESS PAGE  
 5 PEET BURGER  
 6 EXAMINATION BY MR. MORRIS 5  
 7 EXAMINATION BY MR. AIGEN 76  
 8 EXAMINATION BY MR. MORRIS 92  
 9  
 10 E X H I B I T S  
 11 No. Page  
 12 Exhibit 1 Management representation 18  
 13 Letter, 6/3/19  
 14 Exhibit 2 2017 Financial Statements 30  
 15 Exhibit 3 2017 Workpapers 41  
 16 Exhibit 4 2018 Financial Statements 47  
 17 Exhibit 5 2018 Workpapers 55  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 3

1 BURGER  
 2 A P P E A R A N C E S:  
 3 (All appearances via Zoom.)  
 4 Attorneys for Debtor:  
 5 BY: John Morris, Esq.  
 6 PACHULSKI STANG ZIEHL & JONES  
 7 780 Third Avenue  
 8 New York, New York 10017  
 9 Attorneys for the PwC and the Witness:  
 10 BY: John Wander, Esq.  
 11 VINSON & ELKINS  
 12 2001 Ross Avenue  
 13 Dallas, Texas 75201  
 14 Attorneys for John Dondero, Highland Capital  
 15 Management Services, NexPoint:  
 16 BY: Michael Aigen, Esq.  
 17 STINSON  
 18 3102 Oak Lawn Avenue  
 19 Dallas, Texas 75219  
 20  
 21 Attorneys for NexPoint Advisors, LP, Highland  
 22 Capital Fund Advisors:  
 23 BY: Thomas Berghman, Esq.  
 24 MUNSCH HARDT KOPF & HARR  
 25 500 North Akard Street  
 Dallas, Texas 75201  
 Also Present:  
 Ms. La Asia Canty

Page 5

1 BURGER  
 2 P R O C E E D I N G S  
 3 P E E T B U R G E R,  
 4 having been first duly sworn testified as  
 5 follows:  
 6 E X A M I N A T I O N  
 7 B Y M R. M O R R I S:  
 8 Q. Good morning. Can you state your  
 9 name for the record, please?  
 10 A. I can. Peet Burger.  
 11 Q. Are you currently employed,  
 12 Mr. Burger?  
 13 A. Yes.  
 14 Q. By whom?  
 15 A. PricewaterhouseCoopers.  
 16 Q. And what is your title at  
 17 PricewaterhouseCoopers?  
 18 A. I'm an audit partner.  
 19 Q. When did you become an audit partner  
 20 at PricewaterhouseCoopers?  
 21 A. January 1st of 2014.  
 22 Q. Have you been an audit partner at  
 23 PricewaterhouseCoopers on a consistent basis  
 24 since January 1st, 2014?  
 25 A. Yes, I have.

Page 6

1 BURGER

2 Q. In that capacity, have you overseen

3 the audits for Highland Capital Management,

4 L.P.?

5 A. Yes, I did.

6 Q. Just briefly, were you employed by

7 PricewaterhouseCoopers prior to the time you

8 became an audit partner at the beginning of

9 2014?

10 A. Yes, I have. Do I need to give the

11 dates?

12 Q. Can you just tell me when you first

13 joined PwC?

14 A. I joined in January of 1997 in our

15 South African firm. Yes, that's correct.

16 Q. When did you join the audit group?

17 A. In January of 1997.

18 Q. So you have been with

19 PricewaterhouseCoopers' audit unit on a

20 consistent basis for more than 20 years; is

21 that fair?

22 A. Correct.

23 Q. Okay. When did you personally begin

24 working on the Highland Capital Management,

25 L.P. audits, do you recall?

Page 8

1 BURGER

2 answer, will you let me know that?

3 A. Sure.

4 Q. Do you understand that the court

5 reporter is taking down every word that we say?

6 A. Yes.

7 Q. If you want to break at any time,

8 will you let me know?

9 A. Sure.

10 Q. If there is anything that you don't

11 understand, if there is a question that I ask

12 that you either don't understand or you think

13 is ambiguous in some way, will you let me know

14 that?

15 A. Yes.

16 Q. Okay. From PricewaterhouseCoopers'

17 perspective, what is the purpose of an audit?

18 A. To provide reasonable assurance in

19 in terms of the auditing and accounting

20 standards.

21 Q. What standards are you referring to?

22 A. In this case Generally Accepted

23 Auditing Standards.

24 Q. What are Generally Accepted Auditing

25 Standards, if you know?

Page 7

1 BURGER

2 A. Somewhere in 2013. I would say

3 April, 2013.

4 Q. And were you the audit partner in

5 charge of the Highland engagement from 2013

6 until the time the 2018 financial statements

7 were completed?

8 A. This is specific to Highland Capital

9 Management, L.P., yes.

10 Q. I'm just going to refer to Highland

11 Capital Management, L.P. as Highland going

12 forward; is that okay?

13 A. Yes.

14 Q. Have you ever been deposed before?

15 A. No.

16 Q. Okay.

17 A. No.

18 Q. I apologize, I should have started

19 with some ground rules, but I'm trying to be

20 mindful of the time. It is important that you

21 allow me to finish my questions before you

22 begin your answers; is that okay?

23 A. Sure.

24 Q. And if I begin my next question

25 before you begin – before you finish your

Page 9

1 BURGER

2 A. It is a set of rules basically

3 governed by the AICPA of what – considered

4 what is the sort of conglomerate of rules on

5 your professional standards of engagement to

6 sign an audit opinion.

7 Q. And do I have this correctly, that

8 the purpose of the audit is to provide

9 reasonable assurance that the financial

10 statements are in compliance with Generally

11 Accepted Auditing Standards?

12 MR. WANDER: Did you say assurance

13 or insurance?

14 Q. Assurance?

15 A. Yes, assurance, yes. The procedures

16 performed by us in terms of Generally Accepted

17 Auditing Standards and the financials itself is

18 presented in terms of Generally Accepted

19 Accounting Practice.

20 Q. Okay. And are those standards or

21 practices familiar to you in the course of your

22 duties?

23 A. Yes, it is.

24 Q. Okay. Can you describe for me

25 generally the process that PwC undertook in

Page 10

1 BURGER  
 2 connection with its auditing of the Highland  
 3 financial statements? Is there, you know, a  
 4 process that you follow?  
 5 A. Yes, there is. I mean, it is a  
 6 pretty long process which starts all the way  
 7 from the planning to completion and you know,  
 8 through the execution which audit approach  
 9 outlines all the relevant standards of the  
 10 procedures that we're supposed perform from the  
 11 planning, execution and completion stage.  
 12 Q. And is that something that you share  
 13 with Highland so that they understand the  
 14 process?  
 15 A. We don't share our workpapers and  
 16 absolutely every single part of that, but they  
 17 – I mean, they know what we are looking for in  
 18 the sense of obviously for – we make requests  
 19 for information. And if the information is not  
 20 clear, we need to explain to them why we are  
 21 asking them for it.  
 22 Q. And how soon after the completion of  
 23 the fiscal year does PwC begin the process that  
 24 leads to the final audit?  
 25 A. We start this engagement in its

Page 12

1 BURGER  
 2 Q. Is that fair?  
 3 A. That's fair.  
 4 Q. And then during the planning stage,  
 5 PwC would make information requests to  
 6 Highland. Do I have that right?  
 7 A. You have got that correct.  
 8 Q. And then in response to that,  
 9 Highland would feed information to PwC for  
 10 PwC's review. Do I have that right?  
 11 A. Correct.  
 12 Q. And then the fieldwork is – is the  
 13 next step the fieldwork?  
 14 A. Yes.  
 15 Q. Okay. Do you recall during the time  
 16 that you were the audit partner did you have a  
 17 primary contact at Highland for purposes of the  
 18 planning and the execution phases of the audit?  
 19 A. There were more than one individual  
 20 we dealt with, but I recall there was a primary  
 21 contact which facilitated sort of – you know,  
 22 the – which facilitated all of our  
 23 communication.  
 24 Q. And who was that?  
 25 A. That was David Klos.

Page 11

1 BURGER  
 2 fieldwork stage in around about April after –  
 3 April after the unit.  
 4 Q. And what do you mean when you use  
 5 the phrase fieldwork?  
 6 A. Our execution phase.  
 7 Q. Is that the time when you begin to  
 8 send informational requests to Highland?  
 9 A. No, we send it through the planning  
 10 phase as well, which the planning phase is the  
 11 phase where you get engaged to go through all  
 12 the planning and setting up the procedures that  
 13 you are supposed to perform for the – for the  
 14 execution phase. And you can also do some of  
 15 the execution transaction work during that  
 16 period to save yourself from having to spend  
 17 that time in April and May.  
 18 Q. And when does the planning stage  
 19 begin?  
 20 A. Each year can be slightly different,  
 21 but in this case, this was around about the  
 22 October – September, October.  
 23 Q. So the planning would begin in the  
 24 fall of each fiscal year and –  
 25 A. Correct.

Page 13

1 BURGER  
 2 Q. And who besides Mr. Klos were the  
 3 primary points of contact?  
 4 A. Frank Waterhouse is the CFO and  
 5 Kristin Hendrix who, for the lack of a better  
 6 word was the – the sort of chief – the  
 7 accountant.  
 8 Q. The accountant?  
 9 A. Yes.  
 10 Q. Yes. And how many people typically  
 11 were on the Price Waterhouse team for purposes  
 12 of the Highland audits?  
 13 A. It depends on the phase of the  
 14 audit, but at the biggest part of the audit the  
 15 execution phase we were, including me I would  
 16 say six or seven people.  
 17 Q. Okay. And how would  
 18 PricewaterhouseCoopers obtain the information  
 19 that it needed to prepare the audited financial  
 20 statements?  
 21 A. Sorry. Just to make sure, say  
 22 obtain the information. We – we have a – I  
 23 mean, I did this over seven years. It morphed  
 24 over time, but we have a – a site, a secure  
 25 site called Connect. And I think towards the

Page 14

1 BURGER  
 2 end we used that for them to upload  
 3 information.  
 4 Previously Highland had its own  
 5 secure site where we would raise a request and  
 6 they would upload the information on the secure  
 7 site.  
 8 Q. Okay. Did PricewaterhouseCoopers  
 9 rely on management to provide the information  
 10 that would enable PwC to prepare the audited  
 11 financial statements?  
 12 A. We did.  
 13 Q. Did PwC ever make any site visits to  
 14 Highland in connection with the audits?  
 15 A. We did.  
 16 Q. And during those visits, was it  
 17 typical that PricewaterhouseCoopers might have  
 18 follow-up requests for information?  
 19 MR. AIGEN: Objection, form.  
 20 A. Yes.  
 21 Q. Did PwC ever provide drafts of the  
 22 audit reports to Highland for their review  
 23 prior to the time they were finalized?  
 24 A. If you mean audit reports, do you  
 25 mean the one- or two-page opinion that I signed

Page 16

1 BURGER  
 2 MR. WANDER: You mean, GAAP, not  
 3 GAAS?  
 4 Q. I mean, it is auditing not  
 5 accounting; right? So it is Generally Accepted  
 6 Accounting Standards, do I have that right?  
 7 MR. WANDER: The audited – the  
 8 financials are in accordance with GAAP.  
 9 The audit is done in accordance with GAAS.  
 10 Q. Thank you for the clarification, so  
 11 let me rephrase the question.  
 12 Did PwC ask the questions that it  
 13 believed were necessary in order to provide  
 14 reasonable assurance that the financial  
 15 statements were in conformance with GAAP?  
 16 MR. AIGEN: Objection, form.  
 17 A. We did.  
 18 Q. Did PwC receive representation  
 19 letters from Highland in connection with each  
 20 audit?  
 21 A. Yeah, we did.  
 22 Q. And are you personally familiar with  
 23 the form of management representation letter  
 24 that Highland provided to PwC each year?  
 25 A. Yes, I am.

Page 15

1 BURGER  
 2 or do you mean the financial statements?  
 3 Q. I apologize, thank you for the  
 4 clarification.  
 5 I mean, the financial statements and  
 6 the notes accompanying the financial  
 7 statements?  
 8 A. They compile that and that is their  
 9 responsibility, so they provide us with that  
 10 document.  
 11 Q. Okay. So the five or six pages of  
 12 financial statements and all of the notes are  
 13 compiled by Highland, not by PwC?  
 14 A. Correct, yeah, correct.  
 15 Q. And did PwC have an opportunity to  
 16 review and comment on the drafts of the  
 17 financial statements on the accompanying notes?  
 18 A. Yes, we do.  
 19 Q. And did PwC in the course of its  
 20 engagement ask the questions that PwC thought  
 21 was relevant in order to give reasonable  
 22 assurance that the financial statements were in  
 23 accordance with Generally Accepted Auditing  
 24 Standards?  
 25 MR. AIGEN: Objection, form.

Page 17

1 BURGER  
 2 Q. Was it part of your personal  
 3 responsibilities to review the management  
 4 representation letters?  
 5 A. It was.  
 6 Q. From PwC's perspective, what was the  
 7 purpose of the management representation  
 8 letters?  
 9 A. It is an opportunity for us to get  
 10 management to make certain representations of  
 11 us – in terms of scope of what is expected of  
 12 us in an audit.  
 13 Q. And was that representation letter  
 14 required by PwC in order for PwC to sign-off on  
 15 the audit?  
 16 A. It is, it was.  
 17 Q. And is it fair to say that PwC  
 18 relied on the management representation letters  
 19 when it decided to sign-off on the audit?  
 20 A. We did.  
 21 Q. I would like to put up on the screen  
 22 a document that I have marked as Exhibit 1,  
 23 which is the June 3rd, 2019 management  
 24 representation letter.  
 25 (Exhibit 1 marked.)

Page 18

1 BURGER  
 2 Q. Mr. Burger, so –  
 3 MR. AIGEN: Sorry was this produced?  
 4 I just want to make sure, is there a Bates  
 5 label on this for the record?  
 6 MR. MORRIS: I don't know but it was  
 7 used in Mr. Dondero's deposition.  
 8 MR. AIGEN: There is a Bates label.  
 9 Q. So Mr. Burger, this is a little  
 10 awkward. Usually in a deposition I would be in  
 11 the room with you and you would have the  
 12 document in front of you and it would be easy  
 13 for you to review the document. Since we can't  
 14 do that, and I don't know that you have this  
 15 particular document in front of you, we've put  
 16 it up on the screen.  
 17 I'm going to ask you a few questions  
 18 about it, but I strongly encourage you, I  
 19 really request that you let me know if you  
 20 believe that there are other portions of the  
 21 document that you need to review in order to  
 22 either refresh your recollection or to put my  
 23 question into context, okay?  
 24 We're just going to have to make due  
 25 with the technology, but with that background,

Page 20

1 BURGER  
 2 Q. Do you know who drafted this letter?  
 3 A. We did.  
 4 Q. Is this a form of management  
 5 representation that PwC typically prepares in  
 6 the ordinary course of its audits?  
 7 A. Yes, it is derived from a standard  
 8 template.  
 9 Q. And you see in the first paragraph  
 10 there is a reference to the balance sheet date.  
 11 Do I have that right?  
 12 A. Correct.  
 13 Q. And for this particular management  
 14 representation letter, the balance sheet is for  
 15 the fiscal year ending December 31st, 2018;  
 16 correct?  
 17 A. Correct.  
 18 Q. We can scroll down to the bottom,  
 19 but there is – stop right there.  
 20 There is a series of representations  
 21 that are made in this letter. Do you  
 22 understand that?  
 23 A. I do.  
 24 Q. And if we scroll down to, I guess,  
 25 the page ending in 18, you will see that there

Page 19

1 BURGER  
 2 you know, let's – let's go to the – to the  
 3 page ending in 419?  
 4 Do you see there that there are two  
 5 signatures?  
 6 A. Correct.  
 7 Q. And do you understand that those are  
 8 the signatures of James Dondero and Frank  
 9 Waterhouse?  
 10 A. Yes, correct.  
 11 Q. Okay. If we could go back to the  
 12 top of the document, do you understand that  
 13 this is the management representation letter  
 14 that was provided to PwC by Mr. Dondero and  
 15 Mr. Waterhouse on June 3rd, 2019?  
 16 A. Yes.  
 17 Q. Do you know why Mr. Waterhouse and  
 18 Mr. Dondero were the people who signed this  
 19 letter?  
 20 A. Starting with Mr. Waterhouse, he is  
 21 the responsible party from management in the  
 22 sense of being the CFO and Mr. Dondero as the  
 23 general partner because the entity is a limited  
 24 partner and we expect the general partner to  
 25 sign the rep letter.

Page 21

1 BURGER  
 2 is 50 separate representations that are made by  
 3 Mr. Waterhouse and Mr. Dondero, not including  
 4 the subparts. Do you see that?  
 5 A. I do.  
 6 MR. MORRIS: And thank you, La Asia,  
 7 if we can go back to the top.  
 8 Q. So even though the audit letter was  
 9 for the fiscal year ending December 31st, 2018,  
 10 do you see in the sentence just before general  
 11 that Mr. Dondero and Mr. Waterhouse confirmed  
 12 based on their then current knowledge that each  
 13 of the 50 representations were still correct as  
 14 of June 3rd, 2019?  
 15 A. I do.  
 16 Q. Okay. And is that a standard  
 17 practice of PwC to require management to  
 18 confirm the accuracy of the representations not  
 19 just as of the end of the fiscal year, but  
 20 carrying through to the date of the completion  
 21 of the audit?  
 22 A. It is.  
 23 Q. And why does PwC require that the  
 24 representations be carried forward to the date  
 25 of the completion of the audit?

<p style="text-align: right;">Page 22</p> <p>1 BURGER</p> <p>2 A. Because per Generally Accepted</p> <p>3 Auditing Standards we have to consider material</p> <p>4 events occurring after year-end but prior to</p> <p>5 our opinion date or prior to on our opinion</p> <p>6 date.</p> <p>7 Q. Okay. And do you see in the middle</p> <p>8 of the first page there there is a paragraph</p> <p>9 that begins "certain representations"?</p> <p>10 A. Yes.</p> <p>11 Q. And you see that there is a</p> <p>12 definition of items that are considered</p> <p>13 material?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know why the management</p> <p>16 representation letter included a definition for</p> <p>17 items considered material?</p> <p>18 A. Because we cannot reasonably – we,</p> <p>19 the basis of an audit is our reasonable</p> <p>20 assurance with deals with our definition –</p> <p>21 which deals with materiality. So if we expect</p> <p>22 management to represent to us, we give them a</p> <p>23 sense of what we consider to be material.</p> <p>24 Q. Okay. And did Highland ever express</p> <p>25 any concerns about PwC's definition of</p>	<p style="text-align: right;">Page 23</p> <p>1 BURGER</p> <p>2 materiality?</p> <p>3 A. Not that I can recall.</p> <p>4 Q. Did PwC rely on Mr. Dondero and</p> <p>5 Mr. Waterhouse to provide all information</p> <p>6 concerning items considered material as defined</p> <p>7 in this letter?</p> <p>8 MR. AIGEN: Objection, form.</p> <p>9 A. We did.</p> <p>10 Q. Are you generally aware that from</p> <p>11 time-to-time Highland loaned money to</p> <p>12 Mr. Dondero and certain affiliated entities in</p> <p>13 exchange for promissory notes?</p> <p>14 A. I am.</p> <p>15 Q. Can we call those promissory notes</p> <p>16 the affiliated party notes?</p> <p>17 A. That is fine.</p> <p>18 Q. For purposes of the audits, were the</p> <p>19 makers obligations under the affiliated party</p> <p>20 notes considered receivables of Highland?</p> <p>21 A. Yes, receivables of Highland Capital</p> <p>22 Management, L.P.</p> <p>23 Q. Okay. Can we go to the page that is</p> <p>24 ending in 413?</p> <p>25 I'm just going to ask you a few</p>
<p style="text-align: right;">Page 24</p> <p>1 BURGER</p> <p>2 questions about some of the representations</p> <p>3 here. Do you see, Mr. Burger, representation</p> <p>4 number 11?</p> <p>5 A. I do.</p> <p>6 Q. Does representation number 11 apply</p> <p>7 to the affiliated party notes?</p> <p>8 A. It does.</p> <p>9 Q. Was it PwC's understanding that</p> <p>10 Mr. Dondero and Mr. Waterhouse represented that</p> <p>11 the affiliate party notes represented bona fide</p> <p>12 claims against the makers for transactions</p> <p>13 arising on or before the balance sheet date?</p> <p>14 MR. WANDER: Objection, form.</p> <p>15 A. Correct.</p> <p>16 Q. This is one of the 50</p> <p>17 representations that Mr. Dondero and</p> <p>18 Mr. Waterhouse confirmed as of June 30th, 2019;</p> <p>19 correct?</p> <p>20 A. June 3rd, yes, correct.</p> <p>21 Q. Thank you for the clarification.</p> <p>22 Does the last sentence of representation number</p> <p>23 11 mean that all affiliated party notes were</p> <p>24 current as of June 3rd, 2019?</p> <p>25 A. It does.</p>	<p style="text-align: right;">Page 25</p> <p>1 BURGER</p> <p>2 Q. Stated another way, none of the</p> <p>3 affiliated notes were in default as of June</p> <p>4 30th, 2019; correct?</p> <p>5 A. That's correct.</p> <p>6 Q. All right. If we can go to page</p> <p>7 416, please.</p> <p>8 Take a look at representation number</p> <p>9 32 at the top of the page. Do you have an</p> <p>10 understanding of what representation number 32</p> <p>11 means?</p> <p>12 A. Yeah, that is a representation where</p> <p>13 if we were to find any misstatements which does</p> <p>14 not meet the level of materiality, we would put</p> <p>15 that on what we call a summary of uncorrected</p> <p>16 misstatements. And management would –</p> <p>17 management would defer to the fact that they do</p> <p>18 not consider those adjustments necessary in</p> <p>19 terms of neutrality.</p> <p>20 Q. Did PwC understand that in</p> <p>21 representation number 32 Mr. Dondero and</p> <p>22 Mr. Waterhouse represented that basically if</p> <p>23 they got anything wrong it was not material?</p> <p>24 MR. AIGEN: Objection, form.</p> <p>25 A. That is correct.</p>

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1 BURGER

2 Q. And why did PwC request this

3 particular representation?

4 A. Because if anything gets sort of

5 found out to be a potential let's call it error

6 to the financial statements, part of the

7 standards require us to assert from management

8 their view that it is not material.

9 Q. Okay. Did PwC rely on

10 representation number 32 when signing off on

11 the audit?

12 MR. AIGEN: Objection, form.

13 A. We did.

14 Q. Let's look at representation number

15 34. Can you tell me what that means from PwC's

16 perspective?

17 A. It is a assessment of completeness.

18 So in other words, management asserting or,

19 sorry, representing to us that they are not

20 aware of any material transactions or

21 agreements or – agreements being out there

22 that wasn't recorded in the financial

23 statements.

24 Q. And why did PwC want this material

25 representation?

Page 28

1 BURGER

2 representation?

3 A. We did.

4 Q. Why?

5 A. Again, because it is important under

6 alleged party disclosures specifically all

7 disclosures but related party specific that if

8 you have material transactions or events that

9 those be disclosed. And again, we – we do

10 rely on management to also take ownership for

11 that.

12 Q. Okay. Can we go to the next page,

13 please, page ending in 417? Okay, right there.

14 And take a look at representation number 36,

15 please.

16 A. Okay, okay.

17 Q. Can you tell me from PwC's

18 perspective what representation 36 means?

19 A. Again, for management to let us know

20 or assert to us who the related parties are.

21 Q. Is it fair to say that in management

22 representation number 36 Mr. Dondero and

23 Mr. Waterhouse represented that they had

24 disclosed, among other things, all related

25 party transactions of which they were aware?

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1 BURGER

2 A. Under as – under standards it is

3 not our duty to go out and look for necessarily

4 fraud. And you know, it is on the completeness

5 of transactions we do rely on management to let

6 us know if they were material transactions.

7 Q. Did PwC rely on representing –

8 withdrawn.

9 Did PwC rely on representation

10 number 34 when signing off on the audit?

11 A. We did.

12 Q. Let's take a look at representation

13 35D. If you can just read that to yourself for

14 a moment?

15 A. Excuse me, did you say B or D?

16 Q. D as in dog?

17 A. D, okay, okay.

18 Q. Is it fair to say that in

19 representation number 35D, as in dog,

20 Mr. Dondero and Mr. Waterhouse represented that

21 all material transactions with related parties

22 have been properly reported and disclosed in

23 the consolidated financial statements?

24 A. That's correct.

25 Q. Did PwC request this particular

Page 29

1 BURGER

2 A. Correct.

3 Q. And did PwC rely on that

4 representation when it signed off on the audit?

5 A. We did.

6 Q. Go to page 419, please. Okay. Just

7 before the signature line there is a sentence

8 that begins, "to the best of our knowledge."

9 Do you see that?

10 A. Correct.

11 Q. Can you just read that to yourself?

12 A. Okay.

13 Q. Can you tell me from PwC's

14 perspective what that sentence means?

15 A. It means if there were events that

16 occurred after the balance sheet date, before

17 the opinion date that required disclosure, that

18 such disclosures had been made.

19 Q. And why did – is that

20 representation one that is required by GAAP?

21 A. It is – it is a GAAS principle, not

22 a GAAP.

23 Q. And did PwC rely on that

24 representation in the last sentence when it

25 signed off on the audits?

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1 BURGER

2 A. We did.

3 Q. Let's move to the 2017 financial

4 statements. Can we please put up the next

5 exhibit.

6 (Exhibit 2 marked.)

7 Q. Again, Mr. Burger, I will just

8 remind you that if at any time you believe you

9 need to see any other portion of the document

10 in order to capably and fully answer the

11 question that I ask, just let me know, okay?

12 MR. WANDER: John, he has a hard

13 copy of this one in front of him.

14 Q. Beautiful. Maybe it would be easier

15 for you to just take it out and the rest of us

16 will just look on the screen.

17 MR. MORRIS: Thank you, John.

18 Q. Do you have the 2017 audited

19 financial statements in front of you, sir?

20 A. I do.

21 Q. And did you personally lead PwC's

22 efforts in completing the audit for the debtors

23 for Highland's 2017 financial statements?

24 A. Would you mind repeating the

25 question?

Page 32

1 BURGER

2 amounts due from affiliates are carried as

3 assets on Highland's balance sheets?

4 A. Because it meets the definition of

5 an asset.

6 Q. And what is the definition of the

7 asset – withdrawn.

8 What is the definition of an asset

9 that causes the notes and other amounts due

10 from affiliates to appear on the asset portion

11 of the balance sheet?

12 A. This is amounts in the forms of

13 notes or receivables that the entity has title

14 to in the form of an asset, or the classic

15 definition of an asset is you are entitled to

16 the asset and there is reasonable assurance of

17 the recoverability of the asset.

18 Q. Did anybody from Highland ever

19 dispute that the notes and other amounts due

20 from affiliates should be carried on Highland's

21 balance sheet as assets?

22 MR. AIGEN: Objection, form.

23 A. Sorry?

24 MR. WANDER: If you understand, you

25 can answer.

Page 31

1 BURGER

2 Q. Did you personally lead PwC's

3 efforts in auditing Highland's 2017 financial

4 statements?

5 A. I did.

6 Q. Do you recall any deviations from

7 the process that you described earlier in

8 connection with the preparation of Highland's

9 2017 financial statements?

10 A. I do not.

11 Q. Can we go to page 2, please, right

12 there. Do you see in the top half of the

13 screen there is a list of assets?

14 A. I do.

15 Q. And one of those – one of those

16 assets is identified as notes and other amounts

17 due from affiliates. Do you see that?

18 A. I do.

19 Q. And do you know what that relates

20 to?

21 A. So that is the consolidated amount

22 of Highland Capital Management, L.P. with all

23 its affiliates of notes and other amounts that

24 are due from affiliates as defined.

25 Q. Do you know why the notes and other

Page 33

1 BURGER

2 A. No, no, they did not.

3 Q. And that is because these are

4 Highland's balance sheets; correct?

5 A. Correct.

6 Q. Highland, in fact, prepared the

7 document that we're looking at right now;

8 correct?

9 A. Correct, we did not.

10 Q. And Highland made the decision to

11 record the notes and other amounts due from

12 other affiliates as assets on its own balance

13 sheet; right?

14 MR. AIGEN: Objection, form.

15 A. Right.

16 Q. Did PwC ever have any reason to

17 question the carrying of the notes and other

18 amounts due from affiliates as assets on

19 Highland's balance sheets?

20 A. We did not.

21 Q. Is my math right here that the

22 balance sheet shows that as of the end of 2017

23 notes and other amounts due from affiliates

24 constituted more than 10 percent of Highland's

25 assets?



Page 34

1 BURGER  
 2 A. That's correct.  
 3 Q. Okay. If we could just scroll down  
 4 to the bottom of the page. Little further,  
 5 yeah, right there.  
 6 Do you see there is a reference that  
 7 says, quote, the accompanying notes are an  
 8 integral part of these consolidated financial  
 9 statements, closed quote?  
 10 A. I do.  
 11 Q. What does that mean?  
 12 A. That is to draw the attention for  
 13 the reader of not reading this page in a  
 14 stand-alone basis, because there are further  
 15 explanations required to the amounts in the  
 16 footnotes.  
 17 Q. Okay. Let's go to page 28 of the  
 18 document. Okay. Do you see that there is a  
 19 Section 9 entitled related party transactions?  
 20 A. I do.  
 21 Q. And can you describe for me your  
 22 understanding of why there is a note dedicated  
 23 to related party transactions?  
 24 A. It is a GAAP requirement for  
 25 financial statements to disclose material

Page 36

1 BURGER  
 2 information is conveyed in the section called  
 3 notes and other amounts due from affiliates?  
 4 MR. AIGEN: Objection, form.  
 5 MR. WANDER: You can answer.  
 6 A. I can answer, sorry.  
 7 The purpose of this footnote is to  
 8 strike out out – because if you look at the  
 9 balance sheet you just see notes and you have  
 10 no idea who that is from, which amounts and  
 11 what the basic terms are.  
 12 Q. Is it your understanding that this  
 13 section of note 9 sets forth the amounts due  
 14 and owing by each affiliate as of December  
 15 31st, 2017?  
 16 A. That's correct.  
 17 Q. And are the amounts included – are  
 18 those amounts included in the line item that we  
 19 just looked at in the balance sheet called  
 20 notes and other amounts due from affiliates?  
 21 A. Correct.  
 22 Q. Do you know who calculated the  
 23 amounts due and owing by each affiliate as of  
 24 December 31st, 2017?  
 25 A. It was management.

Page 35

1 BURGER  
 2 related-party relationships and transactions.  
 3 Q. If we can go to page 30, please, and  
 4 just scroll straight down so Mr. Burger can see  
 5 what he's got front of him, if we can go to  
 6 page 30.  
 7 Page 30 has a subheading to note 9  
 8 called notes and other amounts due from  
 9 affiliates. Do you see that?  
 10 A. Correct.  
 11 Q. Okay. And do I have it –  
 12 withdrawn.  
 13 Highland prepared all of the  
 14 information that is set forth in this section  
 15 of note 9; is that correct?  
 16 MR. AIGEN: Objection, form.  
 17 A. I did.  
 18 Q. Is it fair to say that this portion  
 19 of note 9 is intended to describe obligations  
 20 due to the debtor by affiliates?  
 21 MR. AIGEN: Objection, form.  
 22 A. That's correct.  
 23 Q. Let me ask a different question to  
 24 deal with Michael's objection.  
 25 Can you tell me, Mr. Burger, what

Page 37

1 BURGER  
 2 Q. Okay. Did management ever tell PwC  
 3 at any time prior to June – withdrawn.  
 4 Did management ever tell PwC at any  
 5 time prior to PwC's signing off on the audited  
 6 financial statements for 2017 that there was  
 7 anything inaccurate about this section of the  
 8 notes?  
 9 MR. AIGEN: Objection, form.  
 10 A. They did not.  
 11 Q. Each of the paragraph ends with a  
 12 sentence that may differ only in as to whether  
 13 it is singular or plural, but it says quote,  
 14 the fair value of the partnership's outstanding  
 15 notes receivable approximates the carrying  
 16 value of the notes receivable. Do you see  
 17 that?  
 18 A. Correct.  
 19 Q. And we can scroll down a little bit  
 20 just so you can – you have got the document in  
 21 front of you. I would just ask you to confirm  
 22 that each paragraph ends with the same sentence  
 23 except for the last paragraph. And does it,  
 24 sir?  
 25 A. Yes, it is on each paragraph for

Page 38

1 BURGER

2 that section of the notes except the paragraph

3 starting on December 21st, 2015.

4 Q. Do you have an understanding of what

5 that sentence means?

6 A. That sentence means that these notes

7 are per GAAP, the notes are supposed to be

8 recorded at fair value and the assertion is

9 that the carrying value is considered a

10 reasonable proxy for fair value.

11 Q. I'm sorry, what is fair value in

12 this context?

13 A. Fair value of all assets would be

14 what you consider to be the reasonable value

15 for exchange of the asset.

16 Q. And then what is the carrying value?

17 How does that differ from the carrying value?

18 A. Carrying value is the -- is a

19 contractual, is the term of the contractual

20 amount. In other words, whatever their loan

21 plus accrued interest minus payments. And fair

22 value is -- is basically the concept of this

23 sentence is stating that the fair value of the

24 approximate or reasonable proxy for carrying

25 value in its (inaudible).

Page 40

1 BURGER

2 A. Correct.

3 Q. Okay. What is this section intended

4 to capture?

5 A. This is supposed to capture any

6 significant material events that occurred after

7 the balance sheet that requires disclosure.

8 Q. And is the information described

9 here information that was provided by Highland

10 Capital?

11 A. Yeah, correct, by management.

12 Q. This section notes that Mr. Dondero

13 issued promissory notes to the partnership in

14 the amount of \$11.7 million in 2018. Do you

15 see that?

16 A. I do.

17 Q. Those obligations are not included

18 in the balance sheet that we looked at earlier

19 for the period ending December 31st, 2017;

20 correct?

21 A. That's correct.

22 Q. The notes issued by Mr. Dondero are

23 the only material subsequent event that PwC was

24 informed about; is that correct?

25 A. Correct.

Page 39

1 BURGER

2 Q. So is it fair to say that based on

3 this portion of note 9, the debtors' financial

4 statements -- withdrawn.

5 Is it fair to say that based on this

6 portion of note 9, Highland is saying that the

7 fair value of the promissory notes from the

8 affiliates was approximately equal to the

9 principal and interest then due under the

10 notes?

11 MR. AIGEN: Objection, form.

12 A. That's correct.

13 Q. Is it fair to say that when the

14 audit -- withdrawn.

15 Is it fair to say that -- no,

16 withdrawn.

17 At the time the audit was completed

18 for 2017, did PwC have any reason to discount

19 the value of any of the notes described on page

20 30 or 31?

21 A. We did not.

22 Q. Okay. Can we go to page 41, please.

23 If you scroll down a little bit you will see

24 there is a section entitled subsequent events

25 which is note 16. Do you see that?

Page 41

1 BURGER

2 Q. Let's go to the 2017 workpapers, if

3 we can call it the next exhibit, please.

4 (Exhibit 3 marked.)

5 Q. All right. I've put up on the

6 screen what I believe are PwC's workpapers in

7 connection with the 2017 audit as it pertains

8 to notes and other amounts due from affiliates.

9 Is that an accurate way to describe this

10 particular document?

11 A. Yes, it would be a workpaper that we

12 retain in our file.

13 Q. Was it prepared in connection with

14 the 2017 audit?

15 A. Yes, this one was.

16 Q. And when I use the phrase "2017

17 audit," I'm specifically talking about the

18 audit that was prepared for the financial

19 statements for the fiscal year ending December

20 31st, 2017. Do you understand that?

21 A. Correct.

22 Q. Okay. Who prepared this particular

23 document?

24 A. Who prepared it?

25 Q. I apologize, who prepared it?

Page 42

1 BURGER  
 2 A. Sorry, Hilda Garcia.  
 3 Q. Hilda Garcia, is she employed by  
 4 PwC?  
 5 A. She is.  
 6 Q. And what is her title?  
 7 A. She is a senior associate now. She  
 8 would have been a senior associate back then as  
 9 well.  
 10 Q. Does she report to you or to  
 11 somebody else?  
 12 A. She reports to me.  
 13 Q. And are you responsible for  
 14 overseeing Ms. Garcia's work?  
 15 A. I am.  
 16 Q. And what is the purpose of this  
 17 document?  
 18 A. The purpose of this document is to  
 19 layout what are the amounts that makes up the  
 20 line item that is on the balance sheet of  
 21 HCMLP. And then the audit procedure is  
 22 performed to gain comfort over those – the  
 23 existence of those amounts based on  
 24 materiality.  
 25 Q. And did PwC prepare workpapers of

Page 44

1 BURGER  
 2 listing out the balances of all accounts from  
 3 the general ledger that is used to produce the  
 4 set of financial statements.  
 5 Q. And was the trial balance made  
 6 available to PwC by Highland in connection with  
 7 its audit work?  
 8 A. It was.  
 9 Q. The next tab is marked credit risk  
 10 analysis. Do you see that?  
 11 A. Yes.  
 12 Q. What is the purpose of the credit  
 13 risk analysis?  
 14 A. The purpose of this is that if you  
 15 think about a receivable or any amount due it  
 16 is about intent and ability. And this is where  
 17 we deal with ability to ask ourself the  
 18 question is the counterparty reasonably able to  
 19 repay the amounts.  
 20 Q. And did PwC conclude in 2000 – in  
 21 connection with the 2017 audit that the makers  
 22 of the notes set forth on this particular slide  
 23 had the ability to pay?  
 24 A. In our opinion, yes.  
 25 Q. Okay. And did PwC base that opinion

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1 BURGER  
 2 this type in the ordinary course of its  
 3 business?  
 4 A. We do.  
 5 Q. And did PwC prepare this particular  
 6 workpaper in the ordinary course of its  
 7 preparation of Highland's 2017 audit?  
 8 A. We did.  
 9 Q. Okay. Can we go to the tab that is  
 10 marked as detailed, if you look at the bottom?  
 11 Do you have that, sir?  
 12 A. Yes, I have.  
 13 Q. Is that tab intended to list all of  
 14 the – of the notes and other amounts due from  
 15 affiliates that were outstanding at the end of  
 16 the fiscal year?  
 17 A. Correct.  
 18 Q. And is this information – where did  
 19 PwC get the information that is set forth on  
 20 the detail tab?  
 21 A. It is from management from the trial  
 22 balance.  
 23 Q. For the record, can you just tell me  
 24 what a trial balance is?  
 25 A. So that is a summary document

Page 45

1 BURGER  
 2 on the information that was provided by  
 3 management?  
 4 MR. AIGEN: Objection, form.  
 5 A. Partly management and partly our own  
 6 due diligence.  
 7 Q. Okay. The next tab is results  
 8 template. Do you see that?  
 9 A. Yes.  
 10 Q. Can you just explain to me what that  
 11 page is, if we could scroll to the top, please?  
 12 A. This – there are a number of notes  
 13 that are being dealt with. This – so if you  
 14 go back to the detail tab, those are the  
 15 individual notes that makes up the amount that  
 16 ties to the back of the financial statement.  
 17 And there are relevant tabs here that deal with  
 18 a number of these loans. In preparation for  
 19 this, we focused on due from HCMSI as that is  
 20 under question.  
 21 Q. Why is due from HCMSI under  
 22 question?  
 23 A. That is my understanding of what the  
 24 deposition relates to.  
 25 MR. WANDER: When he says in

Page 46

1 BURGER  
 2 preparation for this, he means in  
 3 preparation for the deposition he reviewed  
 4 this piece of it, the HCMSI. Not the rest  
 5 of the notes, just HCMSI.  
 6 Q. Okay. So, so but with respect to  
 7 this particular page, is there an analysis that  
 8 PwC is undertaking? Does this reflect an –  
 9 withdrawn.  
 10 Does this page reflect an analysis  
 11 that PwC did?  
 12 MR. AIGEN: Objection, form.  
 13 A. If you add the other relevant tabs  
 14 to it, yes. So in other words, some of them  
 15 link to other tabs. Some of them have  
 16 individual documentation as referenced in the  
 17 marked legends.  
 18 Q. And then there are tabs for the  
 19 individual maker of each set of notes. Do I  
 20 have that right?  
 21 A. Correct.  
 22 Q. All right. Let's go to the 2018  
 23 financial statements, please. Are you familiar  
 24 with Highland's audited financial statements  
 25 for the period ending December 31st, 2018?

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1 BURGER  
 2 A. No, I do not.  
 3 Q. Can we go to the third page of the  
 4 document right there. This document is dated,  
 5 if you look at the bottom, June 3rd, 2019. Do  
 6 you see that?  
 7 A. I do.  
 8 Q. And that was the same date as the  
 9 management representation letter that we looked  
 10 at earlier, do you recall that? We can pull it  
 11 up.  
 12 A. No, I do.  
 13 Q. Is it a coincidence that they both  
 14 have the same date?  
 15 A. No, it is not. We require that to  
 16 be the same.  
 17 Q. And why do you require that the  
 18 management representation letter and the report  
 19 of independent auditors be issued on the same  
 20 day?  
 21 A. This is – this is the date that we  
 22 effectively consider these financials available  
 23 to be issued. And under standards, we are  
 24 required to consider all subsequent events and  
 25 representations up to this date. So therefore,

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1 BURGER  
 2 A. I am.  
 3 MR. AIGEN: Sorry to interrupt. Are  
 4 you marking this? I'm trying to keep  
 5 track, is this –  
 6 MR. MORRIS: Yes, I apologize, this  
 7 will be Exhibit 4.  
 8 (Exhibit 4 marked.)  
 9 MR. AIGEN: 4, okay.  
 10 Q. And did you oversee the preparation  
 11 of the audited financial statements on behalf  
 12 of PwC for the period ending December 31st,  
 13 2018?  
 14 A. Correction, not preparation, we  
 15 don't prepare any of these documents.  
 16 Q. Let – I apologize, let me restate  
 17 the question.  
 18 Did you oversee PwC's audit of  
 19 Highland's financial statements for the period  
 20 ending December 31st, 2018?  
 21 A. Yeah, I did.  
 22 Q. Okay. Do you recall any deviations  
 23 from the process you described earlier in  
 24 connection with the preparation of the 2018  
 25 audited financials?

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1 BURGER  
 2 we cannot accept a date of, let's call it June  
 3 2nd or 1st or earlier from management's  
 4 representation.  
 5 Q. Is – is the report that is set out  
 6 here required by either GAAS or GAAP?  
 7 A. This is – GAAS requires the audit  
 8 opinion to be – to be the document whereby we  
 9 report to the general partner on our – on our  
 10 audit.  
 11 Q. And does PwC have an internal  
 12 process by which it determines whether or not  
 13 to sign-off on – on any particular client's  
 14 audit?  
 15 A. We do.  
 16 Q. Can you describe that process for me  
 17 generally?  
 18 A. From an acceptance phase of the  
 19 client or do you mean the content of their  
 20 opinion?  
 21 Q. The content of the opinion, thank  
 22 you.  
 23 A. Yes. So there is a framework that  
 24 we follow on going back to whether there –  
 25 whether we consider two things. Whether there

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1 BURGER  
 2 are material uncorrected misstatements to the  
 3 financials or material deviations from required  
 4 disclosures. So in other words, are the  
 5 financials reasonable and accurate in terms of  
 6 GAAP, and were we able to perform all the  
 7 procedures. So in other words there weren't  
 8 any undue scope limitations which – which got  
 9 us to a point we weren't able to perform the  
 10 audit and fulfill our professional duty.  
 11 If the answer to those are that we  
 12 fulfill both then we would give what we call an  
 13 unqualified or a clean opinion.  
 14 Q. And is there an opinion committee  
 15 that is – that is dedicated to this process?  
 16 A. No, it is – if it is a clean  
 17 opinion then it is the partner and if  
 18 applicable the second partner on the engagement  
 19 is called. If there is anything which goes  
 20 away from an unqualified opinion, in any  
 21 deviation, then there is a whole consultation  
 22 process with our national office.  
 23 Q. And did you personally approve this  
 24 opinion letter?  
 25 A. I did, that is my signature.

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1 BURGER  
 2 A. It is.  
 3 Q. And that is required by GAAP, do I  
 4 have that right?  
 5 A. You have got it correct.  
 6 Q. Okay. Let's go to page 28, please.  
 7 Do you see on page 28 and continuing  
 8 on page 29 there is again a section of note 9  
 9 entitled notes and other amounts due from  
 10 affiliates?  
 11 A. I do.  
 12 Q. And this information was provided by  
 13 management, correct?  
 14 A. Correct.  
 15 Q. And this portion of note 8 is  
 16 intended to describe the obligations that were  
 17 owed to the debtor by affiliates; correct?  
 18 A. Correct.  
 19 Q. Does this section of note 8 set  
 20 forth the amounts that were due and owing by  
 21 each affiliate as of the end of fiscal year  
 22 2018?  
 23 A. It does.  
 24 Q. And are those amounts included in  
 25 the line item that we just looked at on the

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1 BURGER  
 2 Q. Okay. Let's go to page 2, please,  
 3 consolidated balance sheet.  
 4 Do you see, again, there is the  
 5 notes and other amounts due from affiliates?  
 6 A. I do.  
 7 Q. And does this just carry over from  
 8 the prior years subject to any payments or  
 9 additional notes subject to any changes since  
 10 the end of the prior fiscal year?  
 11 A. It does.  
 12 Q. As of the end of 2018, is it fair to  
 13 say that the notes and other amounts due from  
 14 affiliates now exceeded more than 15 percent of  
 15 Highland's assets?  
 16 A. That is correct.  
 17 Q. Now, let's go to page 26, please.  
 18 And you will see number – note number 8  
 19 relates to related-party transactions. Do you  
 20 see that?  
 21 A. I do.  
 22 Q. So again, do I have this right that  
 23 this section of the notes is intended to  
 24 provide the detail about transactions between  
 25 Highland and related parties?

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1 BURGER  
 2 balance sheet called notes and other amounts  
 3 due from affiliates?  
 4 A. It is.  
 5 Q. And can you confirm for me that  
 6 management is the one who decided – withdrawn.  
 7 Can you confirm for me that  
 8 management is the one who calculated the  
 9 amounts due and owing by each affiliate as of  
 10 December 31st, 2018?  
 11 MR. AIGEN: Objection, form.  
 12 A. That is correct.  
 13 Q. To the best of your knowledge, did  
 14 anybody from Highland ever tell anybody from  
 15 PwC that any of the amounts due and owing as  
 16 set forth in the notes and other amounts due  
 17 from affiliates was wrong or incorrect?  
 18 A. Not to my knowledge.  
 19 Q. And can you confirm for me that in  
 20 connection with the 2018 financial statements  
 21 Highland again stated in general that the fair  
 22 value of the notes and other amounts due from  
 23 affiliates approximates the carrying value of  
 24 the notes receivable?  
 25 A. That's correct.

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1 BURGER

2 Q. Is it fair to say that when PwC

3 issued its audit opinion on June 3rd, 2019 that

4 they had no reason to discount the fair value

5 of any of the notes described in this portion

6 of note 8?

7 MR. AIGEN: Objection, form.

8 A. Yeah, that is correct.

9 Q. Let's go to page 38, please, note

10 15. Do you see note 15 beginning on page 38?

11 A. I do.

12 Q. And is this the section of the notes

13 that are intended to describe material

14 subsequent events that would require

15 disclosure?

16 A. It is.

17 Q. And is the information set forth in

18 section 15 or note 15 information that was

19 provided by Highland?

20 A. Correct.

21 Q. To the best of PwC's knowledge, as

22 of June 3rd, 2019, did note 15 in fact include

23 a description of all material subsequent events

24 that required disclosure?

25 A. That's correct.

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1 BURGER

2 the first instance by Ms. Garcia?

3 A. No, this was prepared by Madeline

4 Pacocha.

5 Q. How do you spell her last name?

6 A. P-a-c-o-c-h-a.

7 Q. And did she report directly to you?

8 A. She did. She was part of the team.

9 Q. Okay. And do you know whether the

10 same process that was followed in 2018 was

11 followed in 2000 – withdrawn.

12 Did PwC follow the same process in

13 creating this document that it did when it

14 created the workpapers in 2017?

15 A. We did.

16 Q. Can you confirm that this document

17 was prepared in the ordinary course of PwC's

18 business?

19 A. It was.

20 Q. Can you confirm that this document

21 was prepared in the ordinary course of PwC's

22 audit of Highland's 2018 financial statements?

23 A. That's correct.

24 Q. Okay. I'm going to ask a few more

25 detailed questions than we did last time. Can

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1 BURGER

2 Q. Did anyone – withdrawn.

3 Do you know whether anyone from

4 Highland ever informed anyone at PwC that there

5 were material subsequent events that were

6 omitted from note 15?

7 A. I'm not.

8 Q. Let's go to the 2018 workpapers.

9 (Exhibit 5 marked.)

10 Q. We will mark this as Exhibit 5.

11 MR. MORRIS: I am trying to go as

12 quickly as I can, Michael, to leave you a

13 little time.

14 MR. AIGEN: Thanks.

15 Q. Do you have that, Mr. Burger?

16 A. Yeah, I do.

17 MR. AIGEN: This is Exhibit 5, John?

18 MR. MORRIS: Yes.

19 Q. Is there anything that you need to

20 look at, Mr. Burger, to confirm that these are

21 PwC's workpapers for the 2018 audit as it

22 relates to notes and other amounts due from

23 affiliates?

24 A. I can confirm.

25 Q. Okay. And was this also prepared in

Page 57

1 BURGER

2 we go to the section called credit risk

3 analysis, the tab.

4 I think earlier you testified that

5 there was kind of two aspects that PwC looked

6 at when analyzing the notes and they were the

7 intent and the ability to pay. Do I have that

8 right?

9 MR. AIGEN: Objection, form.

10 A. That's correct.

11 Q. Okay. And this particular tab,

12 credit risk analysis, related to the ability to

13 pay part of that analysis; correct?

14 A. That's correct.

15 Q. Do you see there is a column called

16 recoverability?

17 A. I do.

18 Q. What is that?

19 A. That is a qualitative assessment to

20 give us reasonable assurance that these notes

21 are, A, not in default or – and B, that the –

22 at least materially the maker has enough assets

23 that we are aware of to – to be able to repay.

24 Q. And did Highland provide the data

25 and information related to each maker's ability

Page 58

1 BURGER  
 2 to pay?  
 3 A. This is a combination but most of  
 4 this is our own due diligence.  
 5 Q. And – and can you describe for me  
 6 what steps in the due diligence process PwC  
 7 undertook to ascertain whether the makers have  
 8 the ability to pay?  
 9 A. Mostly – mostly relates to evidence  
 10 that there are payments on notes and that none  
 11 of the notes are contractually in default. And  
 12 then also very much specifically to  
 13 Mr. Dondero's ability from known assets that  
 14 can be found on public filings.  
 15 Q. And did PwC analyze public filings  
 16 and conclude that Mr. Dondero had the ability  
 17 to repay the notes that had – that he had  
 18 issued to the debtor?  
 19 A. Through public filings which we  
 20 could obtain, we could at least assess that  
 21 there are assets in those, sort of let's call  
 22 it public filings that would be adequate to  
 23 repay the amounts.  
 24 Q. Is it fair to say that this section  
 25 of the workpapers is an assessment of each

Page 60

1 BURGER  
 2 circumstance?  
 3 MR. AIGEN: Objection, form.  
 4 A. Do I answer that?  
 5 MR. WANDER: Yes.  
 6 A. If we become aware of any data or  
 7 anything which shows us that a counterparty  
 8 cannot repay the note, the question stems to  
 9 management as to why they consider the note  
 10 fully recoverable. Because the fact that there  
 11 is a note with a legal agreement to it doesn't  
 12 mean – there may be adverse data that show  
 13 that the counterparty is not able to pay and  
 14 that then results in additional work to assess  
 15 whether that loan can be recorded at its full  
 16 value.  
 17 Q. But in connection with the 2018  
 18 audit, management represented that each of the  
 19 notes was fully recoverable. Do I have that  
 20 right?  
 21 MR. AIGEN: Objection, form.  
 22 A. They did.  
 23 Q. Let's go to the results template,  
 24 please.  
 25 Now, do you see that there is

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1 BURGER  
 2 affiliate's creditworthiness?  
 3 A. Not each individual, but on a more  
 4 look-through basis to specifically Mr. Dondero.  
 5 The purpose of this is not to sign-off on an  
 6 absolute creditworthiness of each party, but to  
 7 provide enough evidence to give us reasonable  
 8 assurance that these notes are recoverable.  
 9 Q. And based on the due diligence that  
 10 PwC did and the information provided by  
 11 Highland, did PwC conclude that the makers of  
 12 the notes had the ability to repay the  
 13 obligations set forth therein?  
 14 A. We did.  
 15 Q. Did PwC rely on the analysis set  
 16 forth on this document in deciding to issue the  
 17 opinion in connection – the clean opinion in  
 18 connection with the 2018 audit?  
 19 A. Yeah, this is part of our workpapers  
 20 which forms the collective base of our opinion,  
 21 yes.  
 22 Q. If PwC had any concerns that any  
 23 maker was unable to repay the obligations under  
 24 any of the notes made to Highland, is there a  
 25 process or what would happen under that

Page 61

1 BURGER  
 2 approximately 116 or 117 – withdrawn.  
 3 Do you see that there is  
 4 approximately \$116 difference between the  
 5 amount per client and the balance per testing?  
 6 A. Yes, I do.  
 7 Q. Okay. What – what does –  
 8 withdrawn.  
 9 Is the amount per client the total  
 10 principal and interest due as of the balance  
 11 sheet date for each of the makers listed under  
 12 the account description column?  
 13 A. That is the amount that is obtained  
 14 from the trial balance that is used for the  
 15 financial statements –  
 16 Q. Okay.  
 17 A. – in Column D.  
 18 Q. And did PwC then test those amounts  
 19 for accuracy or reasonableness?  
 20 A. For reasonableness we went back if  
 21 material to the appropriate legal agreements.  
 22 MR. AIGEN: I didn't want to  
 23 interrupt, but I was objecting to form with  
 24 that one.  
 25 Q. And based on the testing that PwC

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1 BURGER

2 did, did it reach any conclusions as to the

3 reliability of the debtors' of Highland's

4 assessment as to the amount owed by each

5 client?

6 A. Do you mind repeating that question?

7 Q. Yeah, that wasn't very good.

8 What is the purpose of the testing

9 that -- that was undertaken that is reflected

10 on this page?

11 A. So the purpose is, again, the 173 is

12 the amount that goes to the line item in

13 question that we are or that part of feeds into

14 another tab called detail, which goes back into

15 the detail.

16 So from there if we have a balance

17 as recorded in the financial statements we need

18 to obtain the detail behind that, what makes up

19 those amounts. And for each one individually

20 or collective material, we need to test the, A,

21 the existence of the amount and, B, the

22 evaluation of the amount.

23 Q. Let's go to the next tab, due from

24 HCMSI. Do you see that?

25 A. I do.

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1 BURGER

2 October 8th, 2018 that was allocated -- a

3 portion of which was allocated to principal and

4 a portion of which was allocated to interest?

5 A. That's correct.

6 Q. Okay. Let's go to the next tab,

7 Dondero tax loans. Do you know why the loans

8 to Mr. Dondero are described as tax loans?

9 A. It is -- it is described as tax loan

10 to facilitate tax payments based on earnings is

11 my understanding.

12 Q. Did PwC ever make any inquiry as to

13 whether the amounts loaned to Mr. Dondero

14 approximated the amount of tax liability that

15 he faced?

16 MR. AIGEN: Objection, form.

17 A. We did not.

18 Q. Does PwC have any information as to

19 whether or not the loans made to Mr. Dondero

20 were related in any way to his actual tax

21 obligations?

22 MR. AIGEN: Objection, form.

23 A. We did not. We didn't consider it

24 necessary.

25 Q. Did PwC make any inquiry as to the

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1 BURGER

2 Q. So does this show that an entity

3 known as HCMSI had principal and interest due

4 on one or more promissory notes totaling

5 approximately 13 and a half million dollars?

6 A. It is three promissory notes, which

7 adds up to approximately 13.9 million dollars.

8 Q. Okay. So promissory note one is on

9 the left where it says closing date May 31,

10 2017. Do I have that right?

11 A. Correct.

12 Q. And if we scroll down promissory --

13 where is the second promissory note?

14 A. Just go over to column R and then

15 AB, I can read.

16 Q. Okay. So then -- so that is the

17 second promissory note is the one that was

18 issued on June 25th, 2018 in the amount of

19 \$200,000, and then the third one is issued on

20 March 26th, 2018 in the amount of \$150,000. Do

21 I have that right?

22 A. That's correct.

23 Q. And this shows that under the first

24 note, if we could go to the left a bit, that

25 HCMSI paid Highland exactly \$1 million on

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1 BURGER

2 purpose of the loans to Mr. Dondero?

3 MR. AIGEN: Objection, form.

4 A. In general.

5 Q. In general you made an inquiry?

6 A. Yeah, as to the -- the -- as to

7 whether these loans are considered reasonable

8 and arm's length.

9 Q. What information do you recall that

10 you have whether the loans were reasonable and

11 arm's length?

12 A. Related to the notes being at an

13 interest rate which is considered a reasonable

14 interest rate considering all the parties

15 involved. And then more on, you know, again,

16 the testing that were done and the existence of

17 the notes.

18 Q. Did PwC make any inquiry as to the

19 purpose of any of the loans to any of the

20 affiliates including Mr. Dondero?

21 A. We did.

22 Q. Okay. With respect to Mr. Dondero,

23 do you have any information that you haven't

24 already provided as to PwC's understanding of

25 the purpose of the loans?



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1 BURGER  
 2 MR. AIGEN: Objection.  
 3 A. No.  
 4 Q. No. And who – who told PwC, if you  
 5 know, that the loans were being made to  
 6 Mr. Dondero to pay tax payments based on  
 7 earnings?  
 8 A. Management. I cannot recall a  
 9 specific name.  
 10 Q. Okay. But it is your understanding  
 11 that the loans were made to Mr. Dondero in  
 12 order to enable him to pay the taxes due on his  
 13 earnings. Do I have that right?  
 14 A. That's correct.  
 15 Q. And who decided the amount of the  
 16 loans, to the best of your knowledge?  
 17 MR. AIGEN: Objection, form.  
 18 A. It is an agreement between  
 19 management and Mr. – management.  
 20 Q. Do you have anybody – do you have  
 21 any knowledge as to who on behalf of Highland  
 22 made the agreement with Mr. Dondero about the  
 23 amount of the loans?  
 24 A. I cannot recall the specific name.  
 25 Q. If you look at loan number 1 there,

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1 BURGER  
 2 Q. Do you know whether anybody at PwC  
 3 was ever informed by Mr. Dondero – withdrawn.  
 4 Do you know if anybody at PwC was  
 5 ever informed by anybody at Highland that in  
 6 January or February 2019 Mr. Dondero entered  
 7 into an oral agreement with his sister acting  
 8 on behalf of Highland whereby Mr. Dondero and  
 9 certain of his affiliates would be relieved of  
 10 all obligations to pay all amounts otherwise  
 11 due and owing under the promissory notes if  
 12 certain conditions subsequent were met?  
 13 MR. AIGEN: Objection, form.  
 14 A. I do not.  
 15 Q. Okay. Can we go – I apologize, but  
 16 can we go back to tab number – the detail tab  
 17 in the – in the workpapers?  
 18 MR. WANDER: In Exhibit 5 or Exhibit  
 19 3?  
 20 Q. Exhibit 5, thank you for the  
 21 clarification. Okay, so the detail tab and the  
 22 workpapers for 2018 lists all of the notes  
 23 receivable that were made by affiliates of  
 24 Highland; correct?  
 25 A. Correct.

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1 BURGER  
 2 the \$14 million loan that was first made in  
 3 December 2017, do I have this right that  
 4 Mr. Dondero made a payment of over \$750,000  
 5 that was applied to principal and interest on  
 6 December 19th, 2018?  
 7 A. That's correct.  
 8 Q. Okay. And if we scroll down a  
 9 little bit more, keep going, note number 4.  
 10 Did Mr. Dondero make a \$2 million payment to  
 11 Highland on December 18th, 2018, a portion of  
 12 which was used to pay principal and a portion  
 13 of which was used to pay interest on note  
 14 number 4?  
 15 A. That's correct.  
 16 Q. Did anybody ever tell you that in  
 17 January or February 2019 that Mr. Dondero had  
 18 entered into an oral agreement with his sister  
 19 acting on behalf of Highland whereby  
 20 Mr. Dondero and certain of his affiliates would  
 21 be relieved of the obligation to pay amounts  
 22 due under the promissory notes if certain  
 23 conditions subsequent were met?  
 24 MR. AIGEN: Objection, form.  
 25 A. No, they did not.

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1 BURGER  
 2 Q. Are you aware of any oral or written  
 3 amendment to any of the promissory notes that  
 4 are described on the detail page of Exhibit 5?  
 5 MR. AIGEN: Objection, form.  
 6 MR. MORRIS: What – what is the  
 7 objection? Hold on before you answer, what  
 8 is the objection?  
 9 MR. AIGEN: I think it is vague. I  
 10 don't know which stuff you are talking  
 11 about here. Are you asking for a legal  
 12 conclusion, and there is no foundation.  
 13 Q. Yeah, okay. Certainly not asking  
 14 for a legal conclusion and I will – let me ask  
 15 the question again, sir.  
 16 This page lists the amounts that  
 17 each of the affiliates owes to Highland under  
 18 various promissory notes; correct?  
 19 A. Correct.  
 20 Q. Are you aware of any oral or written  
 21 amendment to any of those promissory notes?  
 22 A. No, up to June 3rd, 2019.  
 23 Q. And do you know whether anyone at  
 24 PwC was aware of any oral or written amendment  
 25 to any of the promissory notes as of June 3rd,

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1 BURGER  
 2 2019?  
 3 MR. AIGEN: Objection, form.  
 4 A. No, I'm not.  
 5 Q. Were you ever informed of any  
 6 amendment, written or oral, to any promissory  
 7 note at any time?  
 8 A. I was not.  
 9 Q. Did anyone ever tell you that any of  
 10 the notes in – referred to in the detail tab  
 11 of Exhibit 5 might be forgiven under certain  
 12 circumstances?  
 13 A. No.  
 14 Q. Do you know whether anybody at PwC  
 15 was ever informed by anybody at Highland that  
 16 any of the notes in the detail tab in Exhibit 5  
 17 might be forgiven?  
 18 MR. AIGEN: Objection, form.  
 19 A. I do not.  
 20 Q. Under your understanding of the GAAP  
 21 rules, did Mr. Dondero and Mr. Waterhouse have  
 22 a continuing obligation to inform PwC of any  
 23 circumstances that would call into question the  
 24 collectability of any of the notes due from  
 25 affiliates?

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1 BURGER  
 2 fulfillment of certain conditions subsequent?  
 3 MR. AIGEN: Objection, form.  
 4 A. Again, he did not.  
 5 Q. I'm going to ask the same questions  
 6 now with respect to Mr. Waterhouse.  
 7 To the best of your knowledge, did  
 8 Mr. Waterhouse ever inform anyone at PwC prior  
 9 to June 3rd, 2019 that any of the notes might  
 10 not be collectable?  
 11 MR. AIGEN: Objection, form.  
 12 A. He did not.  
 13 Q. To the best of your knowledge, did  
 14 Mr. Waterhouse ever inform anyone at PwC prior  
 15 to June 3rd, 2019 that any of the notes might  
 16 be forgiven under certain circumstances?  
 17 A. No, he did not.  
 18 Q. To the best of your knowledge, did  
 19 Mr. Waterhouse ever inform anyone at PwC prior  
 20 to June 3rd, 2019 that any of the notes were  
 21 amended?  
 22 A. He did not.  
 23 Q. To the best of your knowledge, did  
 24 Mr. Waterhouse ever inform anybody at PwC prior  
 25 to June 3rd, 2019 that the obligations under

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1 BURGER  
 2 MR. AIGEN: Objection, form.  
 3 A. Yes, they had the responsibility.  
 4 Q. To the best of your knowledge, did  
 5 Mr. Dondero ever inform anybody at PwC prior to  
 6 June 3rd, 2019 that any of the notes might not  
 7 be collectable?  
 8 MR. AIGEN: Objection, form.  
 9 A. He did not.  
 10 Q. To the best of your knowledge, did  
 11 Mr. Dondero ever inform anybody at PwC prior to  
 12 June 3rd, 2019 that any of the notes might be  
 13 forgiven under certain circumstances?  
 14 MR. AIGEN: Objection, form.  
 15 A. He did not.  
 16 Q. To the best of your knowledge, did  
 17 Mr. Dondero ever inform anyone at PwC prior to  
 18 June 3rd, 2019 that any of the notes were  
 19 amended?  
 20 MR. AIGEN: Objection, form.  
 21 A. He did not.  
 22 Q. To the best of your knowledge, did  
 23 Mr. Dondero ever inform anyone at PwC prior to  
 24 June 3rd, 2019 that the obligations under any  
 25 of the notes would be extinguished based on the

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1 BURGER  
 2 any of the notes would be extinguished upon the  
 3 fulfillment of certain conditions subsequent?  
 4 MR. AIGEN: Objection, form.  
 5 A. He did not.  
 6 Q. Now, just going to finish up the  
 7 last set of questions to make it broader for  
 8 anybody at Highland.  
 9 To the best of your knowledge, did  
 10 anyone from Highland ever inform anyone at PwC  
 11 prior to June 3rd, 2019 that any of the notes  
 12 might not be collectable?  
 13 MR. AIGEN: Objection, form.  
 14 A. Not to my knowledge.  
 15 Q. To the best of your knowledge, did  
 16 anyone from Highland ever inform anyone at PwC  
 17 prior to June 3rd, 2019 that any of the notes  
 18 might be forgiven under certain circumstances?  
 19 A. Not to my knowledge.  
 20 Q. To the best of your knowledge, did  
 21 anyone from Highland ever inform anyone at PwC  
 22 prior to June 3rd, 2019 that any of the notes  
 23 were amended?  
 24 MR. AIGEN: Objection, form.  
 25 A. Not to my knowledge.

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1 BURGER

2 Q. To the best of your knowledge, did

3 anyone from Highland ever inform anyone at PwC

4 prior to June 3rd, 2019 that the obligations

5 under any of the notes would be extinguished

6 upon the fulfillment of certain conditions

7 subsequent?

8 A. Not to my knowledge.

9 Q. If PwC had learned before June 3rd,

10 2019 that any of the notes might not be

11 collectable, would PwC have required that

12 information to be disclosed?

13 MR. AIGEN: Objection, form.

14 A. Disclosed or potentially based on

15 materiality financials adjusted.

16 Q. I'm going to ask that question

17 again.

18 A. Okay.

19 Q. If PwC had learned before June 3rd,

20 2019 that any of the notes that had an

21 outstanding principal amount of at least \$1.7

22 million might not be collectable, would PwC

23 have required that to be disclosed?

24 A. Correct.

25 MR. AIGEN: Objection, form.

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1 BURGER

2 MR. AIGEN: Objection, form.

3 A. We would have.

4 Q. And finally, if PwC learned before

5 June 3rd, 2019 that any of the notes that had a

6 then outstanding principal amount due of at

7 least \$1.7 million would be extinguished based

8 on the fulfillment of certain conditions

9 subsequent, would PwC have required that to be

10 disclosed?

11 MR. AIGEN: Objection, form.

12 A. We would have.

13 Q. Okay.

14 MR. MORRIS: I have no further

15 questions. Thank you very much, sir.

16 EXAMINATION

17 BY MR. AIGEN:

18 Q. All right. I guess my first

19 question is, how much of a hard stop time is

20 11:45? I don't mean that for you that can be

21 for counsel.

22 A. I can go to noon.

23 Q. I will try – I do not think I'm

24 going to be able to be done by then. I guess

25 at that point we can stop and it is possible

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1 BURGER

2 Q. And why is that?

3 A. If you have a material – if you

4 have material adverse effects of the balance

5 sheet which gives a material adjustment to the

6 financial statements, depending on the type of

7 event you require either disclosure or actual

8 adjustment to the balance sheet.

9 Q. If PwC had learned before June 3rd,

10 2019 that any of the notes that had a

11 outstanding principal amount due of at least

12 \$1.7 million might be forgiven, would PwC have

13 required that to be disclosed?

14 A. Yes.

15 MR. AIGEN: Objection, form.

16 Q. Is that for the same reasons that

17 you just articulated with respect to the lack

18 of collectability?

19 A. Correct.

20 Q. Just two more questions. If PwC

21 learned before June 3rd, 2019 that any of the

22 notes that had an outstanding principal amount

23 of \$1.7 million or more, if those notes had

24 been amended, would PwC have required that to

25 be disclosed?

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1 BURGER

2 John and I can work out stuff on the side. But

3 just for the record, I understand this isn't

4 your problem I just want to note that we were

5 never told there would be this sort of time

6 limit today. Again, not your problem and I

7 just want to reserve all rights if we can't

8 finish today we may have to come back another

9 time. Hopefully not, I will do my best to ask

10 questions.

11 Let's start with some of the

12 questions you were asked at the end about –

13 Mr. Morris asked you if you had learned certain

14 things. And he asked you several questions

15 about it, that PwC would have required that

16 information to be disclosed. Do you remember

17 that?

18 A. Okay.

19 Q. Yes, you remember that?

20 A. Yes, I do.

21 Q. When you say or he said required to

22 be disclosed, what are you talking about,

23 disclosed where and to whom?

24 A. Typically that would be disclosed in

25 your subsequent events footnotes, but you can

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1 BURGER  
 2 also disclose it in note 9 or 8 in this  
 3 instance, the relevant note.  
 4 Q. And those questions were, for  
 5 instance, one of the questions were do you  
 6 remember being asked if PwC had learned that  
 7 the notes might be forgiven PwC would have  
 8 required that to have been disclosed. Do you  
 9 remember answering that question?  
 10 A. Yeah, I do.  
 11 Q. And I want to focus on this. I know  
 12 these are Mr. Morris' questions, so it may not  
 13 have been your language, but you were asked if  
 14 it might be forgiven.  
 15 What does that mean to you? Are we  
 16 talking about is there a difference for you if  
 17 there was a 1 percent chance that something  
 18 would be forgiven or a 90 percent change of it  
 19 being forgiven?  
 20 A. If we learned about something, let's  
 21 say, we learned might be forgiven, that would  
 22 have resulted in additional audit work. The  
 23 question I understood to be and the answer I  
 24 gave was if something happened where there was  
 25 an event that actually occurred before or on

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1 BURGER  
 2 PwC would have to analyze and assess a  
 3 condition to determine whether it is something  
 4 this needs to be disclosed?  
 5 A. Yeah, we will have to analyze it.  
 6 Q. And how would PwC go about analyzing  
 7 a potential event that might forgive or  
 8 discharge the notes?  
 9 A. It depends on what the event is. It  
 10 comes down to a function of materiality and  
 11 probability and understanding the potential  
 12 event through discussions with management.  
 13 Again, it depends on the event.  
 14 Q. Okay. And without knowing the  
 15 specific event, would you agree that you can't  
 16 testify today on whether that would need to be  
 17 disclosed in the financials?  
 18 MR. MORRIS: Objection to the form  
 19 of the question.  
 20 A. Again, the purpose of subsequent  
 21 event disclosure is to disclose to the reader  
 22 of the financial statements any events that  
 23 actually occurred. And if we are aware of  
 24 something that – that did not occur but that  
 25 may have a material adverse effect on the

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1 BURGER  
 2 June 3rd, we would have required disclosure.  
 3 Q. Got it. So is it fair to say that  
 4 in response to all of Mr. Morris' questions  
 5 about what would have been required to be  
 6 disclosed, in your mind he was referring to  
 7 those events or items having actually occurred  
 8 and the notes being actually forgiven at that  
 9 point in time; is that correct?  
 10 MR. MORRIS: Objection to the form  
 11 of the question.  
 12 Q. I didn't hear your answer.  
 13 A. Correct.  
 14 Q. So you haven't provided any  
 15 testimony today about what PwC might have  
 16 required to be disclosed or disclosed if  
 17 certain events took place in the future; is  
 18 that fair to say?  
 19 MR. MORRIS: Objection to the form  
 20 of the question.  
 21 A. That is fair to say, but any events  
 22 that we learn of may have – will be assessed  
 23 for what the impact on the valuation of the  
 24 loan is.  
 25 Q. And is it fair to say, then, that

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1 BURGER  
 2 financial statements, that is something that we  
 3 would consider for disclosure.  
 4 Q. And when you say you'd consider it,  
 5 is it fair that you would analyze the  
 6 probability that the event would occur?  
 7 MR. MORRIS: Objection to the form  
 8 of the question.  
 9 A. Correct.  
 10 Q. And would you also –  
 11 A. Correct.  
 12 Q. Would you also look at the potential  
 13 materiality of that event?  
 14 A. Yes.  
 15 Q. And with respect to the promissory  
 16 notes at issue in this litigation, is it fair  
 17 to say that no one at PwC made any sort of  
 18 analysis about whether those notes would be  
 19 potentially discharged due to events that might  
 20 occur in the future?  
 21 MR. MORRIS: Objection to the form  
 22 of the question.  
 23 A. That is not part of our professional  
 24 work responsibility to consider potential  
 25 events that might occur.

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1 BURGER

2 Q. And the audits that we were talking

3 about were in 2017 and 2018; is that correct?

4 A. Yeah, conducted in '18 for '17 and

5 conducted in '19 for '18.

6 Q. Okay. And I just want to ask some

7 general questions about the audits that were

8 done. And to speed things up, I'm going to ask

9 you the questions combining those two years.

10 If you need to break it down per year we can do

11 that, too, but these are pretty general

12 questions.

13 Can you tell me approximately how

14 many people worked on the audits of Highland at

15 PwC in 2017 and 2018?

16 A. Again, earlier I said six or seven.

17 Q. And out of those six or seven, how

18 many people had communications with anyone at

19 Highland?

20 A. I would argue all of them, all of

21 us.

22 Q. Okay. And who at Highland did these

23 six or seven people have communications with

24 with respect to the work on the audits?

25 A. It depends. It depends on the

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1 BURGER

2 related to the audit directly.

3 Q. Do you know whether any of the other

4 people at PwC that worked on the audit had any

5 conversations with Mr. Dondero?

6 A. Not that I'm aware of.

7 Q. At the end of Mr. Morris' questions

8 if you remember you were asked several

9 questions about whether you or anyone at PwC

10 had different conversations with anyone at

11 Highland about the notes and them being

12 potentially forgivable or discharged or

13 amended. Do you remember testifying to that?

14 A. Yeah, I do.

15 Q. You were asked about conversations

16 you had and you said you had no such

17 conversations; is that correct?

18 A. Correct.

19 Q. You also testified that you are not

20 aware of any conversations of anyone else that

21 PwC had with anyone at Highland about this

22 subject; is that correct?

23 A. That's correct.

24 Q. Did you – I know you said you're

25 not aware and I guess my question is how do you

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1 BURGER

2 nature of the question. So again, Kristin

3 Hendrix, and actually earlier there is another

4 name Drew Wilson would have been a person that

5 we dealt with on a day-to-day basis. Above

6 them would be Dave Klos and above them would be

7 Frank Waterhouse, the CFO.

8 So again, if it is a routine matter,

9 our more junior people probably dealt with

10 Kristin and Drew. And if it is not a routine

11 matter and on periodic status meetings, my

12 communication would have probably been more

13 with Dave Klos and my managers.

14 Q. I apologize. Other than those four,

15 Ms. Hendrix, Mr. Wilson, Mr. Klos and

16 Mr. Waterhouse, is there anyone else at

17 Highland that PwC communicated with as part of

18 the audit that you are aware of?

19 A. Not that I'm aware of. I mean,

20 there is a chance that they might have had

21 somebody else involved, but not that I can

22 recall.

23 Q. Have you ever had any conversations

24 with Mr. Dondero?

25 A. Not specifically relating to any –

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1 BURGER

2 know that? Did you have any conversations with

3 anyone else at PwC about whether they had any

4 such conversations with anyone at Highland

5 about potential dischargeability of the notes?

6 A. I would have had discussions with my

7 manager directly through a review of the

8 engagement as we go through all of this. And

9 in this instance depending on the person

10 involved whether it was Hilda or Madeline, we

11 analyze, review as we try to get towards

12 sign-off.

13 And on this line item, we would have

14 gone through the work done on this note, you

15 know, and the discussion of whether there is

16 any adverse event that anybody is aware of.

17 Q. These are all the conversations you

18 are aware of during the audit not in the last

19 couple of years; is that correct?

20 A. Yeah, during the audit.

21 MR. MORRIS: Objection to the form

22 of the question.

23 Q. Are you aware of any specific

24 discussions that you had with anyone else at

25 PwC about whether they had any communications

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1 BURGER  
 2 with anyone at Highland about whether the notes  
 3 were potentially dischargeable or amended?  
 4 MR. MORRIS: Objection.  
 5 A. No, I'm not aware.  
 6 Q. As part of the audit process, is one  
 7 of the things that PwC looks at who would be  
 8 reviewing or relying on the financial  
 9 statements that you are auditing?  
 10 A. Yes, we consider that.  
 11 Q. And why is that considered?  
 12 A. It is important – well, A, the –  
 13 the format of our report and obviously just  
 14 governed by who relies on it. So in other  
 15 words, if you have a public client with the  
 16 PCAOB standards where everybody in the public  
 17 relied on there are additional procedures and  
 18 additional scope than we have to perform. In a  
 19 certain sense you can deal with two sets of  
 20 rules. And the other part of that is  
 21 considered in who we address our opinion to.  
 22 Q. And in the case of the Highland  
 23 audits, did PwC make an effort to determine who  
 24 would be reviewing and relying on the audits,  
 25 audited financial statements?

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1 BURGER  
 2 different, but there are certain nuances in our  
 3 obligation of neutrality as to whether I'm in a  
 4 PCAOB engagement or a AICPA engagement.  
 5 Q. What do you mean by that?  
 6 A. So when we decide – you get to an  
 7 overall materiality. So if you for example,  
 8 are in a fund engagement you can use different  
 9 metrics as to whether you are in, let's say, a  
 10 hedge fund or a mutual fund, which is driven by  
 11 the users of the financials.  
 12 MR. WANDER: It is a difference  
 13 between public and private, Michael.  
 14 Q. And this would be a private  
 15 transaction we're calling it; is that correct?  
 16 A. Yes, governed – sorry, not  
 17 governed, performed. Performed under the  
 18 standards of the AICPA and not the PCAOB.  
 19 Q. And would those standards make a  
 20 difference on what is considered material as  
 21 part of PwC's work?  
 22 A. Depending on the industry, it may.  
 23 Q. And would those differences  
 24 potentially make a difference on what needed to  
 25 be disclosed in the financial statements?

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1 BURGER  
 2 A. Yes. As this is a partnership, it  
 3 is generally available to the general partner  
 4 and the partners. And there wasn't any  
 5 specific need that we were aware of with  
 6 third-party lenders or banks or anything that  
 7 we are relying on financials.  
 8 Q. Is who is going to end up reviewing  
 9 and relying on a financial statement relevant  
 10 to what PwC considers to be material and thus  
 11 need to be disclosed?  
 12 MR. MORRIS: Objection to the form  
 13 of the question, asked and answered.  
 14 A. No, sorry.  
 15 Q. Then what is the relevance – sorry.  
 16 If it is – if who is going to  
 17 review a financial statement is not relevant to  
 18 what is going to be disclosed, why is it  
 19 relevant to the work that PwC is doing?  
 20 A. We perform audits either in terms of  
 21 GAAS as promulgated by AICPA or PCAOB, and  
 22 there are differences in those standards.  
 23 And a correction to your previous  
 24 question, on materiality the basis for forming  
 25 a point of view on what is material is not

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1 BURGER  
 2 A. Yeah. The standards from a PCAOB  
 3 the asset and disclosure requirements under the  
 4 PCAOB rules, which would not be there under  
 5 AICPA.  
 6 Q. Changing topics a little bit here.  
 7 We talked about related-party transactions a  
 8 little earlier. Do you remember?  
 9 A. Sure, I do.  
 10 Q. Not we, you and Mr. Morris. Can you  
 11 just generally at a high level explain what a  
 12 related-party transaction is?  
 13 A. So related-party I cannot – I  
 14 cannot quote the verbatim GAAP or GAAS  
 15 definition right now, but in effect the  
 16 related-party is any party that up or down the  
 17 stream can have material influence or control  
 18 of the entity. So it would be key management,  
 19 anybody in an ownership structure upstream  
 20 which has significant interest or control as  
 21 well as even – it can be in certain  
 22 circumstances, certain service providers.  
 23 Q. Let's concentrate on notes for a  
 24 second. There can be –  
 25 A. Okay.

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1 BURGER  
 2 Q. – related-party notes and then what  
 3 would you call them non-related-party notes if  
 4 they're not related-party notes? Is there a  
 5 term for that?  
 6 MR. MORRIS: Objection to form of  
 7 the question.  
 8 A. Third party, unaffiliated.  
 9 Q. When analyzing the collectability of  
 10 notes, is there any differences in what PwC was  
 11 doing looking at affiliated – non-affiliated  
 12 transaction notes versus related-party notes?  
 13 MR. MORRIS: Objection to the form  
 14 of the question.  
 15 A. Not really.  
 16 Q. You say "not really," that can –  
 17 A. Yeah, not – no, there isn't,  
 18 because at the end of the day whether a note is  
 19 collectable or not is something that you have  
 20 to get evidence of, and the existence of the  
 21 note is something you have to get evidence of.  
 22 Q. I think I can finish up with a  
 23 couple more questions here. I just want to  
 24 sort of go back to what we talked about in the  
 25 beginning. PwC did not do any sort of analysis

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1 BURGER  
 2 would look at the probability that that event  
 3 would occur; is that correct?  
 4 A. Correct, probability and potential  
 5 impact.  
 6 Q. And materiality?  
 7 A. Materiality.  
 8 Q. And that is nothing that you or  
 9 anyone at PwC did with respect to any potential  
 10 conditions that might forgive these notes; is  
 11 that correct?  
 12 A. Yeah, we did not. Yeah, we did not.  
 13 MR. AIGEN: That is all the  
 14 questions I have.  
 15 FURTHER EXAMINATION.  
 16 BY MR. MORRIS:  
 17 Q. I just have a few more, sir, few  
 18 follow-ups.  
 19 PwC made no assessment as to whether  
 20 or not any of the notes might not be forgiven  
 21 because they were never given any information  
 22 that indicated that that was even possible;  
 23 correct?  
 24 MR. AIGEN: Objection, form.  
 25 A. That's correct.

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1 BURGER  
 2 as to whether the notes in question would be  
 3 potentially forgiven or discharged; is that  
 4 correct?  
 5 MR. MORRIS: Objection to the form  
 6 of the question.  
 7 MR. AIGEN: What is your basis for  
 8 the objection?  
 9 MR. MORRIS: It is not their  
 10 responsibility to do that. There is no  
 11 foundation.  
 12 Q. That is fine, you can answer the  
 13 question.  
 14 A. No, we did not as we did not have  
 15 to.  
 16 Q. If PwC had learned that there was  
 17 some condition down the road that could  
 18 potentially discharge or forgive the notes,  
 19 would PwC have had to do some sort of analysis  
 20 to determine if that condition would need to be  
 21 disclosed?  
 22 A. Yes, if you become aware of any  
 23 adverse event which may impact the valuation of  
 24 any asset you have to consider that.  
 25 Q. And in order to consider that, you

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1 BURGER  
 2 Q. PwC was never given any information  
 3 about the possibility that any of the  
 4 affiliated promissory notes might be forgiven;  
 5 correct?  
 6 A. Correct.  
 7 Q. PwC was never informed that  
 8 Mr. Dondero had entered into an agreement that  
 9 could impact the collectability of any of the  
 10 promissory notes; correct?  
 11 MR. AIGEN: Objection, form.  
 12 A. Correct.  
 13 MR. MORRIS: I have no further  
 14 questions.  
 15 MR. AIGEN: I don't have anything.  
 16 MR. MORRIS: Mr. Burger, I greatly  
 17 appreciate your time and your patience.  
 18 Thank you very much, John, same to  
 19 you. Thank you for the accommodations and  
 20 I hope –  
 21 MR. WANDER: Certainly, thank you.  
 22 (Deposition adjourned at 11:41 a.m.)  
 23  
 24  
 25

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1 BURGER  
 2 \_\_\_\_\_  
 3 PEET BURGER  
 4  
 5 Subscribed and sworn to before me  
 6 this day of 2021.  
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1 BURGER  
 2 CERTIFICATE  
 3  
 4 I, SUSAN S. KLINGER, a certified  
 5 shorthand reporter within and for the State  
 6 of Texas, do hereby certify:  
 7 That PEET BURGER, the witness whose  
 8 deposition is hereinbefore set forth, was  
 9 duly sworn by me and that such deposition  
 10 is a true record of the testimony given by  
 11 such witness.  
 12 I further certify that I am not  
 13 related to any of the parties to this  
 14 action by blood or marriage; and that I am  
 15 in no way interested in the outcome of this  
 16 matter.  
 17 IN WITNESS WHEREOF, I have hereunto  
 18 set my hand this 30th of July, 2021.  
 19  
 20 \_\_\_\_\_  
 21 Susan S. Klinger, RMR-CRR, CSR  
 22 Texas CSR# 6531  
 23  
 24  
 25

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1 ERRATA SHEET  
 2 Case Name:  
 3 Deposition Date:  
 4 Deponent:  
 5 Pg. No. Now Reads Should Read Reason  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
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 21 \_\_\_\_\_  
 Signature of Deponent  
 22 SUBSCRIBED AND SWORN BEFORE ME  
 23 THIS \_\_\_ DAY OF \_\_\_\_\_, 2021.  
 24 \_\_\_\_\_  
 25 (Notary Public) MY COMMISSION EXPIRES:\_\_\_\_\_

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center;"><u>                    </u> <b>2</b> <u>                    </u></p> <p><b>2</b> 30:6 31:11 51:2</p>	<p><b>20</b> 6:20</p> <p><b>2000</b> 44:20 56:11</p> <p><b>2013</b> 7:2,3,5</p> <p><b>2014</b> 5:21,24 6:9</p> <p><b>2015</b> 38:3</p> <p><b>2017</b> 30:3,18,23 31:3, 9 33:22 36:15,24 37:6 39:18 40:19 41:2,7,14,16,20 43:7 44:21 56:14 63:10 67:3 82:3,15</p> <p><b>2018</b> 7:6 20:15 21:9 40:14 46:22,25 47:13,20,24 51:12 52:22 53:10,20 55:8, 21 56:10,22 59:18 60:17 63:18,20 64:2 67:6,11 68:22 82:3, 15</p> <p><b>2019</b> 17:23 19:15 21:14 24:18,24 25:4 48:5 54:3,22 67:17 68:6 69:22 70:2 71:6, 12,18,24 72:9,15,20, 25 73:11,17,22 74:4, 10,20 75:10,21 76:5</p> <p><b>21st</b> 38:3</p> <p><b>25th</b> 63:18</p> <p><b>26</b> 51:17</p> <p><b>26th</b> 63:20</p> <p><b>28</b> 34:17 52:6,7</p> <p><b>29</b> 52:8</p> <p><b>2nd</b> 49:3</p> <p style="text-align: center;"><u>                    </u> <b>3</b> <u>                    </u></p> <p><b>3</b> 41:4 68:19</p> <p><b>30</b> 35:3,6,7 39:20</p> 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## **EXHIBIT 13**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 In re: :  
5 : Chapter 11  
6 : Case No.  
7 HIGHLAND CAPITAL MANAGEMENT, : 19-34054-sgj11  
8 L.P. :  
9 Debtor. :

10 -----  
11 :  
12 HIGHLAND CAPITAL MANAGEMENT, :  
13 L.P. :  
14 Plaintiff, :

15 vs. : Adversary  
16 : Proceeding No.

17 NEXPOINT ADVISORS, L.P., : 21-03005-sgj  
18 JAMES DONDERO, NANCY DONDERO, :  
19 AND THE DUGABOY INVESTMENT :  
20 TRUST, :  
21 Defendants. :

22 -----  
23  
24  
25 REMOTE VIDEO DEPOSITION OF JAMES DONDERO  
VOLUME III

Thursday, November 4, 2021

JOB NO. 202288

<p style="text-align: right;">Page 2</p> <p>1 2 3 4 November 4, 2021 5 1:17 p.m. CDT 6 7 8 Remote video deposition of JAMES 9 DONDERO taken in the above-entitled matter 10 before Suzanne J. Stotz, a Certified Shorthand 11 Reporter, Certified Realtime Reporter, 12 Registered Professional Reporter, and Notary 13 Public of the State of Texas, on Thursday, 14 November 4, 2021, commencing at 1:17 p.m. CDT. 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 3 Attorneys for Highland Capital Management L.P.: 4 (Via videoconference) PACHULSKI STANG ZIEHL &amp; JONES 5 780 Third Avenue 6 New York, New York 10017 7 BY: JOHN MORRIS, ESQ. 8 HAYLEY WINOGRAD, ESQ. 9 10 Attorneys for NexPoint Advisors, L.P.: 11 (Via videoconference) MUNSCH HARDT KOPF &amp; HARR 12 500 North Akard Street Dallas, Texas 75201 13 14 BY: THOMAS BERGHMAN, ESQ. 15 16 Attorneys for James Dondero, Nancy Dondero, HCRE HCMS: 17 18 (Via videoconference) STINSON 19 3102 Oak Lawn Avenue Dallas, Texas 75219 20 BY: DEBORAH DEITSCH-PEREZ, ESQ 21 BY: MICHAEL AIGEN, ESQ. 22 23 24 25</p>
<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES (Continued): 2 3 Attorneys for Nancy Dondero: 4 (Via videoconference) GREENBERG TRAUIG 5 220 Ross Avenue Dallas, Texas 75201 6 7 BY: DANIEL ELMS, ESQ. 8 9 Attorneys for The Dugaboy Investment Trust: 10 (Via videoconference) HELLER, DRAPER, HAYDEN, PATRICK &amp; HORN 11 650 Poydras Street New Orleans, Louisiana 70130 12 13 14 BY: DOUGLAS DRAPER, ESQ. MICHAEL LANDIS, ESQ. 15 16 Attorneys for The Litigation Trust: 17 (Via videoconference) QUINN EMANUEL URQUHART &amp; SULLIVAN 18 51 Madison Avenue New York, New York 10010 19 20 21 BY: ROBERT LOIGMAN, ESQ. DEBORAH NEWMAN, ESQ. 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES (Continued): 2 3 ALSO PRESENT: 4 (Via Videoconference) JACOB ARVOLD, Videographer 5 6 (Via Videoconference) LA ASIA CANTY, Legal Assistant c/o Pachulski Stang Ziehl &amp; Jones 7 8 (Via Videoconference) AARON LAWRENCE, Law Clerk c/o Quinn Emanuel Urquhart &amp; Sullivan 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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3 EXAMINATION Page No.

4 JAMES DONDERO

5 BY MR. MORRIS 10

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8 EXHIBITS

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10 Exhibit Name Description Page No.

11 Exhibit James Dondero Compensation 56

12 68 and Benefits Statement, Bates stamped D-CNL003585

13 Exhibit James Dondero Compensation 59

14 50 and Benefits Statement, Bates stamped D-CNL003587

15 Exhibit E-mail correspondence, Bates 95

16 53 stamped D-CNL003768 through D-CNL003770

17 Exhibit E-mail correspondence, Bates 107

18 54 stamped D-CNL003777 through D-CNL003779

19 Exhibit E-mail correspondence, Bates 116

20 56 stamped D-CNL003763

21 Exhibit Promissory Note, Bates 119

22 57 stamped D-CNL003764 through D-CNL003765

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1 JAMES DONDERO

2 THE VIDEOGRAPHER: Good afternoon.

3 My name is Jacob Arvold. I'm a certified

4 legal videographer in association with

5 TSG Reporting, Inc.

6 Due to the severity of COVID-19 and

7 following the practice of social

8 distancing, I will not be in the same room

9 with the witness; instead, I will record

10 this video deposition remotely.

11 The reporter, Suzanne Stotz, also

12 will not be in the same room and will swear

13 the witness remotely.

14 Do all parties stipulate to the

15 validity of video recording and remote

16 swearing and that it will be admissible in

17 the courtroom as if it had been taken

18 following Rule 30 of the Federal Rules of

19 Civil Procedures and the state's rules

20 where this case is pending?

21 MR. MORRIS: Yes.

22 If anybody objects to that, please

23 speak up.

24 Nobody has spoken up. So everybody

25 is deemed to have accepted that.

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1 INDEX (Continued)

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3 EXHIBITS (Continued)

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5 Exhibit Name Description Page No.

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7 Exhibit 34 Highland Capital Management, L.P., Consolidated Financial Statements and Supplemental Information, dated December 31, 2018, Bates stamped D-CNL000212 through D-CNL000257 123

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9

10 Exhibit Memorandum, dated 130

11 59 October 23, 2020, Bates stamped HCMFAS 000025 through HCMFAS 000031

12 Exhibit Defendant James Dondero's 163

13 24 Objections and Responses to Plaintiff's Requests for Admission, Interrogatories, and Requests for Production

14

15 Exhibit Defendant NexPoint Advisors, L.P.'s Objections and Responses to Plaintiff's Requests for Admission, Interrogatories, and Requests for Production 173

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22 (Exhibits attached to transcript.)

23

24

25

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1 JAMES DONDERO

2 THE VIDEOGRAPHER: Thank you.

3 This is the start of Media Number 1,

4 Volume II [sic] of the video-recorded

5 deposition of James Dondero in the matter

6 of In Re: Highland Capital Management,

7 L.P., in the United States Bankruptcy Court

8 for the Northern District of Texas.

9 This deposition is being held

10 remotely on November 4, 2021, at

11 approximately 1:17 p.m.

12 Counsel, please introduce

13 yourselves.

14 MR. MORRIS: Everybody is – is on

15 here. I don't – we can't take the time to

16 do that. I'm familiar with everybody on

17 here. Everybody's appeared in this action

18 before, and I'd like to proceed.

19 THE VIDEOGRAPHER: All right. The

20 appearances will be on the stenographic

21 record.

22 Will the court reporter please

23 reswear the witness.

24 THE COURT REPORTER: Could you raise

25 your hand.

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1 JAMES DONDERO  
 2 THE WITNESS: (Complies with  
 3 request.)  
 4 JAMES DONDERO,  
 5 having first been duly sworn, was examined and  
 6 testified as follows:  
 7 MS. DEITSCH-PEREZ: I only have one  
 8 questions. Who's Robert Loigman?  
 9 MR. LOIGMAN: I already stated for  
 10 the record. I'm with Quinn Emanuel. I'm  
 11 Debbie Newman's partner.  
 12 MS. DEITSCH-PEREZ: Okay. Thank  
 13 you.  
 14 MR. MORRIS: Can we please put up on  
 15 the screen the document that's been marked  
 16 Exhibit 31.  
 17 MS. CANTY: (Complies with request.)  
 18 EXAMINATION  
 19 BY MR. MORRIS:  
 20 Q. Mr. Dondero, do you understand that  
 21 this is a continuation of your deposition from  
 22 Friday?  
 23 A. Yes.  
 24 Q. Have you spoken with anybody about  
 25 your testimony since we concluded the

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1 JAMES DONDERO  
 2 A. Yes.  
 3 Q. How much time did you spend speaking  
 4 with your attorney since the conclusion of the  
 5 last deposition?  
 6 A. 30 minutes, 40 minutes.  
 7 Q. Are you aware that Alan Johnson  
 8 testified in this case the other day?  
 9 A. I don't know who Alan Johnson is.  
 10 Uh, no.  
 11 Q. Okay. Is it fair to say that you  
 12 have no knowledge of Mr. Johnson's testimony?  
 13 A. I have no knowledge of Mr. Johnson's  
 14 testimony.  
 15 Q. Are you aware that an expert was  
 16 examined by me earlier in the week in  
 17 connection with this case?  
 18 A. I'm aware there's an expert. I'm  
 19 not – I'm not aware that you've examined,  
 20 deposed, or whatever you did with him.  
 21 Q. Okay. When did you speak with your  
 22 counsel for 30 minutes about – following last  
 23 Friday's examination?  
 24 A. About 40 minutes ago.  
 25 Q. Okay.

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1 JAMES DONDERO  
 2 deposition on Friday?  
 3 A. No.  
 4 Q. Nobody in the world?  
 5 A. Just my attorney.  
 6 Q. And did you speak with your attorney  
 7 about the substance of the deposition on  
 8 Friday? Just –  
 9 MS. DEITSCH-PEREZ: I'm going to  
 10 direct – I'm going to direct him not to  
 11 answer.  
 12 BY MR. MORRIS:  
 13 Q. Okay. I'm just asking you a  
 14 yes-or-no question. I'm not asking for the  
 15 substance of any communications.  
 16 MS. DEITSCH-PEREZ: Well, you're –  
 17 one, I'd have to talk to him to see what he  
 18 thinks "substance" means.  
 19 And to the extent that's  
 20 substantive, you're actually getting at the  
 21 content potentially of a discussion. So  
 22 I'm going to direct him not to answer.  
 23 BY MR. MORRIS:  
 24 Q. Are you going to follow your  
 25 counsel's advice?

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1 JAMES DONDERO  
 2 MR. MORRIS: Can we go to  
 3 paragraph 82 of this document –  
 4 Q. – Mr. Dondero, do you see that this  
 5 is your answer to the Plaintiff's Amended  
 6 Complaint.  
 7 A. Yes.  
 8 Q. And we looked at this the other day;  
 9 do you remember that?  
 10 A. Yes.  
 11 MR. MORRIS: Can we can go to page–  
 12 paragraph 82, please.  
 13 MS. CANTY: (Complies with request.)  
 14 BY MR. MORRIS:  
 15 Q. And I just want to table set to make  
 16 sure we're on the same page.  
 17 Paragraph 82 describes the  
 18 agreements that you entered into with Dugaboy  
 19 consuming the forgiveness of certain Promissory  
 20 Notes subject to conditions subsequent.  
 21 Is that a fair overarching overview  
 22 of the nature of the agreements?  
 23 A. Yes.  
 24 Q. Okay. And for the rest of the  
 25 deposition today, when I use the phrase

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1 JAMES DONDERO  
 2 "agreements," I'm going to mean the agreements  
 3 that are referred to in paragraph 82; is that  
 4 fair?  
 5 A. Yes, generally. If I have any  
 6 questions, I'll – I'll ask.  
 7 Q. Thank you very much.  
 8 The agreements covered each of the  
 9 notes that are the subject of the lawsuits that  
 10 Highland commenced against you, HCRE Services,  
 11 and NexPoint; is that right?  
 12 A. The – yes.  
 13 Q. What are you looking at?  
 14 A. Just this note sheet that covers all  
 15 the notes.  
 16 Q. Oh.  
 17 MR. MORRIS: Deborah, I would demand  
 18 that that sheet be produced immediately.  
 19 MS. DEITSCH-PEREZ: Okay.  
 20 MR. MORRIS: Okay. And I would ask  
 21 him to put it away.  
 22 MS. DEITSCH-PEREZ: No. He's a  
 23 30(b)(6) witness. He's entitled to have a  
 24 list of the notes. He sure he is.  
 25 MR. MORRIS: I'm telling you now –

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1 JAMES DONDERO  
 2 okay?  
 3 Please put it away.  
 4 THE WITNESS: Isn't that what this  
 5 deposition is, right? This deposition –  
 6 MS. DEITSCH-PEREZ: Well, this  
 7 deposition is both.  
 8 We're going to take a break for a  
 9 second. Let me think about that, but  
 10 I'll –  
 11 MR. MORRIS: I object. I really  
 12 object. I really object. I'm glad that  
 13 this is all on the record. I object.  
 14 My request is that he put it away  
 15 and answer questions in his capacity as an  
 16 individual.  
 17 I don't know why we need to take a  
 18 break.  
 19 MS. DEITSCH-PEREZ: Well, because  
 20 I'm going to go take a picture of it and  
 21 send it to you.  
 22 MR. MORRIS: I don't want you to do  
 23 that, though.  
 24 MS. DEITSCH-PEREZ: Why don't you  
 25 want – okay.

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1 JAMES DONDERO  
 2 MS. DEITSCH-PEREZ: I'm sorry to say  
 3 to you.  
 4 MR. MORRIS: I object. That is – I  
 5 have never in my life seen a witness –  
 6 MS. DEITSCH-PEREZ: I have had  
 7 30(b)(6) witnesses with whole notebooks of  
 8 information.  
 9 MR. MORRIS: Okay. So let's just  
 10 make sure the record is clear.  
 11 BY MR. MORRIS:  
 12 Q. Please describe for me what's on  
 13 that page.  
 14 A. It's a listing of the Notes payable  
 15 to Highland, what their original term and  
 16 amount was, what the term is, and what the loan  
 17 date was.  
 18 Q. Okay. I'm going to ask the –  
 19 MS. DEITSCH-PEREZ: No. I'm going  
 20 to take a picture, and I'm going to send it  
 21 to you, okay?  
 22 MR. MORRIS: Okay. And what we're  
 23 going to do right now is ask him to put it  
 24 away, and I'm going to ask him questions  
 25 solely in his capacity as an individual,

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1 JAMES DONDERO  
 2 MR. MORRIS: We can do that – we  
 3 can do that when I ask him questions as a  
 4 30(b)(6) witness.  
 5 By the way, it's still  
 6 inappropriate, but –  
 7 MS. DEITSCH-PEREZ: No, it's not  
 8 John.  
 9 MR. MORRIS: Okay.  
 10 MS. DEITSCH-PEREZ: It's just not.  
 11 You can say it as much as you want. It  
 12 doesn't make it inappropriate.  
 13 And I am going to – I want to think  
 14 for a minute about whether or not your  
 15 request to have him not have it in front of  
 16 him in his individual capacity is  
 17 appropriate. And I'm not going to make a  
 18 snap decision. I'm going to talk to my  
 19 colleagues, and we'll be back on the record  
 20 in a couple of minutes.  
 21 MR. MORRIS: I object, but I can't  
 22 stop you.  
 23 MS. DEITSCH-PEREZ: Okay.  
 24 THE VIDEOGRAPHER: Would you like to  
 25 go off the video record, Counsel?

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1 JAMES DONDERO  
 2 MR. MORRIS: No, no, not at all.  
 3 THE VIDEOGRAPHER: Okay.  
 4 MR. MORRIS: And just keep the --  
 5 keep the record going.  
 6 THE VIDEOGRAPHER: Yep, will do.  
 7 MR. MORRIS: And we're not off the  
 8 record?  
 9 THE VIDEOGRAPHER: Correct.  
 10 THE COURT REPORTER: Correct.  
 11 MS. DEITSCH-PEREZ: Okay. We're  
 12 back on the record.  
 13 THE VIDEOGRAPHER: We remained on  
 14 the record.  
 15 MS. DEITSCH-PEREZ: Okay. And this  
 16 part -- this -- at this point Mr. Morris  
 17 only taking Mr. Dondero's deposition in his  
 18 personal capacity, not as a 30(b)(6)  
 19 witness.  
 20 If you want to resume taking his  
 21 deposition as a 30(b)(6) witness, let me  
 22 know; and I will tell him to get his list  
 23 of notes.  
 24 MR. MORRIS: So he doesn't have it  
 25 in front of him right now?

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1 JAMES DONDERO  
 2 you enter into with Dugaboy trustee concerning  
 3 Promissory Notes?  
 4 A. Is your question -- is your  
 5 questions how many Notes were entered into?  
 6 Q. No. How many separate agreements  
 7 did you enter into?  
 8 A. The 2017, '18, and '19 agreements.  
 9 Q. Okay. I didn't ask you what  
 10 agreements. I asked how many agreements you  
 11 entered into with the Dugaboy trustee.  
 12 MS. DEITSCH-PEREZ: Asked and  
 13 answered.  
 14 THE WITNESS: Three major ones.  
 15 BY MR. MORRIS:  
 16 Q. Are there any minor ones?  
 17 A. Not that I can recall right now.  
 18 Q. Okay. When did you enter into your  
 19 first major agreement with the Dugaboy trustee?  
 20 A. At the end of '17.  
 21 Q. Meaning December 2017 or early 2018?  
 22 A. Yes.  
 23 Q. What Promissory Notes are the  
 24 subject of the first major agreement that you  
 25 entered into with the Dugaboy trust-- with

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1 JAMES DONDERO  
 2 THE WITNESS: Correct.  
 3 MS. DEITSCH-PEREZ: Correct, he does  
 4 not.  
 5 MR. MORRIS: Okay. I'm going to  
 6 proceed; and I would ask, Deborah, that  
 7 somebody from your office send that to me  
 8 as soon as possible. I'm sure it's on an  
 9 e-mail somewhere and all they have to do is  
 10 hit send.  
 11 BY MR. MORRIS:  
 12 Q. Mr. Dondero, let's continue.  
 13 So you don't have that document in  
 14 front of you right now?  
 15 A. Correct.  
 16 Q. Okay. How many agreements did you  
 17 enter into with Dugaboy?  
 18 MS. DEITSCH-PEREZ: You mean with  
 19 the Dugaboy trustee?  
 20 We had an agreement that you were  
 21 going to refer to these as the agreements  
 22 with the Dugaboy trustee. So let's stay  
 23 consistent.  
 24 BY MR. MORRIS:  
 25 Q. Mr. Dondero, how many agreements did

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1 JAMES DONDERO  
 2 the Dugaboy trustee?  
 3 A. I don't remember which ones  
 4 specifically. I remember the amount was more  
 5 substantial than subsequent years.  
 6 Q. Do you know how many Promissory  
 7 Notes were the subject of your first major  
 8 agreement with the Dugaboy trustee?  
 9 A. No.  
 10 Q. Can you identify the maker of any  
 11 Note that's subject to the first major  
 12 agreement with the Dugaboy trustee?  
 13 A. Not without my list or details.  
 14 Q. Can you identify the principal  
 15 amount of any Promissory Note that was subject  
 16 to the first agreement that you entered into  
 17 with the Dugaboy trustee?  
 18 A. I know they were -- I know the gross  
 19 amount. I know they were some of the term  
 20 loans, but I don't know the specifics.  
 21 Q. Can you tell me the aggregate  
 22 amount -- withdrawn.  
 23 Can you tell me the aggregate  
 24 principal amount of the Notes that are the  
 25 subject of your first agreement with the



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1 JAMES DONDERO  
 2 Dugaboy trustee?  
 3 A. I – I believe it was 30 – 30 some  
 4 odd million, 30 – I can't remember the  
 5 principal and interest, but it's only 30 – 34,  
 6 35, 36. It was in that range.  
 7 Q. Did your first agreement with the –  
 8 withdrawn.  
 9 Can you identify the date of any of  
 10 the Promissory Notes that are the subject of  
 11 your first agreement with the Dugaboy trustee?  
 12 A. No.  
 13 Q. Can you tell me the year that any of  
 14 the Promissory Notes that are the subject of  
 15 the – withdrawn.  
 16 Can you tell me the year that any of  
 17 the Promissory Notes were entered into that are  
 18 the subject of your first agreement with the  
 19 Dugaboy trustee?  
 20 MS. DEITSCH-PEREZ: Asked and  
 21 answered.  
 22 THE WITNESS: No, not off the top of  
 23 my head.  
 24 BY MR. MORRIS:  
 25 Q. When did you – did – when did you

Page 24

1 JAMES DONDERO  
 2 whatever; but I don't remember –  
 3 Q. Okay.  
 4 A. – off the top of my head.  
 5 Q. Off the top of your head, can you  
 6 tell me the original principal amount of any  
 7 Note that's subject to your second agreement  
 8 with the Dugaboy trustee?  
 9 A. No. I just – no.  
 10 Q. Can you identify the date on which  
 11 any of the Promissory Notes were executed that  
 12 were the subject of your second agreement with  
 13 the Dugaboy trustee?  
 14 A. No.  
 15 Q. Can you tell me the aggregate  
 16 principal amount of the Notes that are the  
 17 subject of your second agreement with the  
 18 Dugaboy trustee?  
 19 A. Yes. A fraction of the prior year.  
 20 Less than ten million.  
 21 Q. Can you be anymore precise than  
 22 that?  
 23 A. Approximately ten million, I think.  
 24 Just under.  
 25 Q. Okay. Did you enter into your third

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1 JAMES DONDERO  
 2 enter into the second agreement with the  
 3 Dugaboy trustee?  
 4 Was that in December of 2018 or  
 5 early 2019?  
 6 A. Yes.  
 7 Q. How many Notes are subject to your  
 8 second agreement with the Dugaboy trustee?  
 9 A. Less than the first, but I don't  
 10 know how many.  
 11 Q. You don't know the number of Notes  
 12 that are the subject of your second agreement  
 13 with the Dugaboy trustee; is that right?  
 14 A. Correct.  
 15 Q. Can you identify the maker of any  
 16 Notes that are the subject of your second  
 17 agreement with the Dugaboy trustee?  
 18 A. No, I – I – no, I don't remember.  
 19 Q. Okay. So as you sit here right now,  
 20 you can't identify the maker of any of the  
 21 Notes that are the subject of the second  
 22 agreement with the Dugaboy trustee; is that  
 23 right?  
 24 A. Well, it would be one of the three  
 25 parties or four parties here, me or NexPoint or

Page 25

1 JAMES DONDERO  
 2 agreement with the Dugaboy trustee in December  
 3 2019 or early 2020?  
 4 A. Yes.  
 5 Q. That's after the petition date; do I  
 6 have that right?  
 7 A. I – yes.  
 8 Q. Did you do it before or after  
 9 January 9, 2020?  
 10 A. Before, I believe.  
 11 Q. So while you were still in control  
 12 of Highland but after the petition date, you  
 13 entered into your third agreement with the  
 14 Dugaboy trustee concerning Promissory Notes.  
 15 Do I have that right?  
 16 A. Yes.  
 17 Q. Did you ever inform the bankruptcy  
 18 court of this agreement?  
 19 A. No.  
 20 Q. Did you ever inform the independent  
 21 directors of this agreement that you entered  
 22 into after the petition date?  
 23 A. No.  
 24 Q. Can you tell me which notes are the  
 25 subject of your third agreement with the

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1 JAMES DONDERO  
 2 Dugaboy trustee?  
 3 A. No.  
 4 Q. Can you identify the maker on any  
 5 Note that's the subject of your agreement that  
 6 you entered into after the petition date with  
 7 the Dugaboy trustee?  
 8 A. Not off the top of my head.  
 9 MS. DEITSCH-PEREZ: I mean, John, if  
 10 you would let him look at his list, he  
 11 could tell you.  
 12 But if you insist on making this a  
 13 memory test of 18 or so different things or  
 14 however many there are, 13, 14, then this  
 15 is – it's your deposition. But if you  
 16 want more specific details, he could look  
 17 at the list.  
 18 MR. MORRIS: Okay. That's not even  
 19 an objection let alone a speaking  
 20 objection.  
 21 It is my deposition –  
 22 MS. DEITSCH-PEREZ: No.  
 23 MR. MORRIS: It is my deposition,  
 24 and I would appreciate your not making  
 25 gratuitous comments.

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1 JAMES DONDERO  
 2 BY MR. MORRIS:  
 3 Q. All right. I don't want you to  
 4 speculate either. So I'm going to ask you just  
 5 broad follow-up questions.  
 6 Can you identify any Promissory Note  
 7 that is the subject of any specific agreement  
 8 that you ever entered into with the Dugaboy  
 9 trustee without looking at the list?  
 10 MS. DEITSCH-PEREZ: Object to the  
 11 form. He's already done that to some  
 12 degree.  
 13 THE WITNESS: I believe it covered  
 14 virtually all of them. So I don't remember  
 15 which ones specifically in each year.  
 16 Generally, it was, I believe, the  
 17 ones incurred in that year, but I don't  
 18 remember which entities. But again, the  
 19 ultimate result being that the term loans,  
 20 the demand notes, the things incurred, the  
 21 things outstanding were part of the  
 22 agreement.  
 23 BY MR. MORRIS:  
 24 Q. Sir, you never wrote down a list of  
 25 the notes that are the subject of the

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1 JAMES DONDERO  
 2 BY MR. MORRIS:  
 3 Q. Mr. Dondero, can you tell me the  
 4 aggregate value of the Notes that are the  
 5 subject of the third agreement that you entered  
 6 into with the Dugaboy trustee after the  
 7 petition date?  
 8 A. I believe it was about a million  
 9 bucks.  
 10 Q. And who were the makers of the Notes  
 11 that are the subject of the agreement with the  
 12 Dugaboy trustee that you entered into after the  
 13 petition date?  
 14 A. I don't know.  
 15 Q. Without the sheet that you looked at  
 16 earlier, you have no ability to tell me which  
 17 notes were the subject of which agreement that  
 18 you entered into with the Dugaboy trustee,  
 19 correct?  
 20 MS. DEITSCH-PEREZ: Object to the  
 21 form.  
 22 THE WITNESS: If I'm not certain off  
 23 the top of my head I can remember  
 24 accurately, I don't want to speculate.  
 25

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1 JAMES DONDERO  
 2 agreements, correct?  
 3 A. Correct.  
 4 Q. You never asked anybody to make a  
 5 list of the notes that were the subject of each  
 6 of the agreements, correct?  
 7 A. Correct.  
 8 Q. You're not aware of any document  
 9 that was created prior to the commencement of  
 10 these lawsuits that identifies the Notes that  
 11 are the subject of the agreements, correct?  
 12 A. Correct.  
 13 Q. Other than the Promissory Notes that  
 14 are the subject of this lawsuit – withdrawn.  
 15 Other than the Promissory Notes that  
 16 are the subject of these lawsuits, are you  
 17 aware of any other doc- – Promissory Notes  
 18 that are the subject of an agreement with the  
 19 Dugaboy trustee?  
 20 A. I believe there are from time to  
 21 time, yes. But I – I don't know off the top  
 22 of my head.  
 23 Q. Can you identify the maker of any  
 24 Promissory Note that is the subject of any  
 25 agreement with the Dugaboy trustee other than

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1 JAMES DONDERO  
 2 the Promissory Notes that are the subject of  
 3 the pending lawsuits?  
 4 A. Not specifically, but I believe  
 5 there are.  
 6 Q. Okay. Can you identify the  
 7 principal amount of any Promissory Note that is  
 8 the subject of an agreement with the Dugaboy  
 9 trustee that is not part of the pending  
 10 lawsuits?  
 11 A. Not specifically.  
 12 Q. Can you tell me the year in which  
 13 any Promissory Note was ever executed that is  
 14 the subject of any agreement with the Dugaboy  
 15 trustee other than the Promissory Notes that  
 16 are the subject of the pending lawsuits?  
 17 A. I believe there were several, and I  
 18 believe there were numerous ones over the  
 19 years.  
 20 Q. Okay. And -- and are those  
 21 Promissory Notes subject to one of the three  
 22 agreements that we've identified or subject to  
 23 some other agreement with the Dugaboy trustee?  
 24 A. Well, they weren't to these related  
 25 entities. I -- I don't know what the

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1 JAMES DONDERO  
 2 Note where Dugaboy is the maker and Highland is  
 3 the payee?  
 4 A. Dugaboy -- can you repeat that  
 5 question one more time?  
 6 Q. Sure. Did you enter into an  
 7 agreement with the Dugaboy trustee relating to  
 8 any Promissory Note where Dugaboy is the maker?  
 9 A. No, I don't believe so.  
 10 Q. Okay. So you don't have any  
 11 recollection of ever entering into an agreement  
 12 with the Dugaboy trustee concerning the  
 13 potential forgiveness of any Note that was made  
 14 by Dugaboy, correct?  
 15 A. I -- I do not believe so.  
 16 Q. Okay. And is there a -- is there a  
 17 document that we could look at that would  
 18 refresh your recollection?  
 19 A. Not beyond the financials of Dugaboy  
 20 and any relevant Note detail.  
 21 Q. And would -- is it -- is it your  
 22 testimony that an agreement with Dugaboy would  
 23 be reflected in the Dugaboy financial  
 24 statements?  
 25 A. No, but the Notes would be.

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1 JAMES DONDERO  
 2 agreements were specifically subject to.  
 3 Q. Are you the person who entered into  
 4 the agreement with the Dugaboy trustee  
 5 concerning the notes that you are describing  
 6 right now?  
 7 A. Yes, I guess.  
 8 Q. As the person who entered into the  
 9 agreement with the Dugaboy trustee concerning  
 10 Notes that are not the subject of the pending  
 11 litigation, can you identify anything about  
 12 those Notes, whether it's the maker, the date,  
 13 the principal amount, anything at all?  
 14 A. Not off the top of my head.  
 15 Q. Okay. What would -- what would you  
 16 have to look at to know? The chart or  
 17 something else?  
 18 A. No, not this -- not this chart.  
 19 This only has to do with what we thought this  
 20 deposition was going to be about.  
 21 It would be the financials of  
 22 Dugaboy; and then from there, the detail  
 23 regarding any Notes that it has.  
 24 Q. Did you enter into an agreement with  
 25 the Dugaboy trustee to forgive a Promissory

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1 JAMES DONDERO  
 2 Q. Well, the Dugaboy Notes are  
 3 reflected in Highland's financial statements.  
 4 Do you want me to get that?  
 5 A. No. I didn't think that was -- I  
 6 didn't think that was the question you were  
 7 asking me.  
 8 Q. I apologize. Maybe it was my fault.  
 9 What would we have to look at in  
 10 order to refresh your recollection as to  
 11 whether or not you entered into an agreement  
 12 with the Dugaboy trustee concerning the  
 13 potential forgiveness of any Note made by  
 14 Dugaboy?  
 15 A. Other than the ones we're talking  
 16 about today, right?  
 17 Q. We're not talking about -- there's  
 18 no Promissory Note where Dugaboy is the maker  
 19 that is the subject of any of the pending  
 20 lawsuits, correct?  
 21 A. Correct.  
 22 Q. So I'm asking you to identify if you  
 23 can any Promissory Note that is the subject of  
 24 any agreement you have ever entered into with  
 25 the Dugaboy trustee that is not the subject of

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1 JAMES DONDERO  
 2 one of the pending lawsuits.  
 3 Do you understand that that's what  
 4 I'm trying to get at?  
 5 MS. DEITSCH-PEREZ: Asked and  
 6 answered.  
 7 THE WITNESS: Yes.  
 8 BY MR. MORRIS:  
 9 Q. Okay. Can you identify any such  
 10 Promissory Note?  
 11 A. No, not specifically as I sit here  
 12 today.  
 13 Q. Okay. Other than the promissory --  
 14 withdrawn.  
 15 Are you familiar with the term  
 16 "majority interest" as used in the Highland  
 17 Limited Partnership Agreement?  
 18 A. Yes.  
 19 Q. Okay. Other than the Promissory  
 20 Notes that are the subject of the pending  
 21 lawsuits, are you aware of any other Promissory  
 22 Notes that are the subject of any agreement  
 23 with the majority interest?  
 24 MS. DEITSCH-PEREZ: Object to the  
 25 form. Asked and answered.

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1 JAMES DONDERO  
 2 been numerous notes other than to these  
 3 entities today where Dugaboy was the maker  
 4 or recipient or whatever.  
 5 BY MR. MORRIS:  
 6 Q. So you do believe that Dugaboy was  
 7 the maker of a Promissory Note that's subject  
 8 to an agreement with the majority interest?  
 9 MS. DEITSCH-PEREZ: Object to the  
 10 form.  
 11 THE WITNESS: What I'm saying is I  
 12 believe Dugaboy had other -- made other  
 13 Notes and received other Notes from other  
 14 entities other than Highland.  
 15 BY MR. MORRIS:  
 16 Q. Does that have anything to do with  
 17 Highland?  
 18 Maybe I wasn't clear. I'm using the  
 19 phrase "majority interest" as that phrase -- I  
 20 thought we had -- I thought we had an  
 21 understanding -- as that phrase is used in the  
 22 Highland Limited Partnership Agreement, right?  
 23 A. I thought it was a definition term  
 24 in the Highland, L.P.  
 25 Q. It is, and I just -- I'd like to

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1 JAMES DONDERO  
 2 THE WITNESS: The majority interest  
 3 is controlled by the 75 percent. It's  
 4 controlled by Dugaboy. But the majority  
 5 interest isn't an entity in and of itself,  
 6 right?  
 7 BY MR. MORRIS:  
 8 Q. Okay. Has Dugaboy held the majority  
 9 interest since the time that Highland was  
 10 created?  
 11 A. No.  
 12 Q. Okay. So -- so then I'm going to  
 13 ask my question again.  
 14 Are you aware of any agreement  
 15 concerning any Promissory Note that is the  
 16 subject -- withdrawn.  
 17 Are you aware of any agreement with  
 18 the majority interest that concerns any  
 19 Promissory Note where Highland is the payee  
 20 other than the Notes that are the subject of  
 21 the pending lawsuit?  
 22 MS. DEITSCH-PEREZ: Asked and  
 23 answered.  
 24 THE WITNESS: Not specifically as I  
 25 sit here today, but I do believe there have

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1 JAMES DONDERO  
 2 move on if I can, but I just want some clarity  
 3 here.  
 4 Is there any agreement between  
 5 Dugaboy and the majority interest concerning  
 6 any Promissory Note where Dugaboy is the maker?  
 7 MS. DEITSCH-PEREZ: Object to the  
 8 form.  
 9 THE WITNESS: I -- I don't know what  
 10 you're getting at. I have a tried to  
 11 answer it the best I can several different  
 12 ways.  
 13 But try it one more time, and I'll  
 14 try and answer it just specifically yes or  
 15 no.  
 16 BY MR. MORRIS:  
 17 Q. Okay. Is Dugaboy the maker on any  
 18 Promissory Note where Highland is the payee?  
 19 A. I don't believe so at this point.  
 20 Q. Was Dugaboy ever the maker on a Note  
 21 where Highland was the payee to the best of  
 22 your knowledge?  
 23 A. I don't -- I just don't know what  
 24 the actual accounting was or could have or  
 25 should have been. But if it prepays a Note,

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1 JAMES DONDERO  
 2 instead of prepaying a Note, it could have left  
 3 it in an existing Note outstanding and then  
 4 issued a separate Note, right, instead of  
 5 prepaying, right?  
 6 So I don't know in the -- in the pas  
 7 past or how exactly they handled prepays  
 8 consistently over time. But at the moment, I  
 9 don't believe there's a loan going from Dugaboy  
 10 to Highland.  
 11 But I do believe over the years,  
 12 there were numerous loans from Dugaboy to other  
 13 entities other than the ones we're talking  
 14 about today.  
 15 MS. DEITSCH-PEREZ: Okay. John,  
 16 we've gone way far afield of the topics for  
 17 this deposition or anything that you ought  
 18 to be even asking this individual witness  
 19 about given what these litigations are.  
 20 Could we move on, please?  
 21 MR. MORRIS: No. Other than --  
 22 MS. DEITSCH-PEREZ: You're spending  
 23 time on things other than the --  
 24 MR. MORRIS: Please stop talking.  
 25 MS. DEITSCH-PEREZ: -- action.

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1 JAMES DONDERO  
 2 A. I -- no -- or wait. Hold on a  
 3 second.  
 4 Yes. I guess, yes.  
 5 Q. Okay. At the time you entered into  
 6 the agreements, did you understand that  
 7 Dugaboy, as a majority -- as a representative  
 8 of a majority of the Class A shareholders of  
 9 the plaintiff was the entity that entered into  
 10 the agreement on behalf of Highland?  
 11 A. Yes.  
 12 Q. And your sister Nancy is the trustee  
 13 of Dugaboy today, correct?  
 14 A. Yes.  
 15 Q. And Nancy was the trustee of Dugaboy  
 16 at the time you entered into each of the  
 17 agreements, correct?  
 18 A. Yes.  
 19 Q. And you knew that at the time you  
 20 entered each of the agreements, correct?  
 21 A. Yes.  
 22 Q. You knew she was acting on behalf of  
 23 Dugaboy, correct?  
 24 A. Yes.  
 25 Q. Your understanding at that time that

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1 JAMES DONDERO  
 2 MR. MORRIS: Please stop talking.  
 3 BY MR. MORRIS:  
 4 Q. Other than the Promissory Notes that  
 5 are the subject of the lawsuits, are you aware  
 6 of any other Promissory Notes that are the  
 7 subject of any agreement that the Dugaboy  
 8 trustee ever entered into as a representative  
 9 of the majority of Class A shareholders?  
 10 MS. DEITSCH-PEREZ: Asked and  
 11 answered. I think we've answered after the  
 12 sixth time.  
 13 THE WITNESS: Not as I sit here  
 14 today.  
 15 BY MR. MORRIS:  
 16 Q. In paragraph 82 in about the fifth  
 17 line down, there's a statement that, quote,  
 18 "Nancy Dondero is representative for a majority  
 19 of the Class A holders of plaintiff, agree that  
 20 plaintiff would forgive the Notes."  
 21 Do you see that?  
 22 A. Yes.  
 23 Q. The word "plaintiff" as used in your  
 24 answer refers to Highland Capital Management,  
 25 L.P., correct?

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1 JAMES DONDERO  
 2 you entered into each of the agreements with  
 3 the Dugaboy trustee was that Dugaboy held the  
 4 majority of Highland's Class A interest,  
 5 correct?  
 6 A. Yes.  
 7 Q. And that's exactly why you contacted  
 8 Nancy to discuss the topics that ultimately led  
 9 to the agreements, correct?  
 10 A. Yes.  
 11 Q. You specifically called Nancy  
 12 because you wanted her to cause Dugaboy to  
 13 enter into the agreements with you on behalf of  
 14 Highland, correct?  
 15 A. Yes.  
 16 Q. And just as you wanted, Nancy, in  
 17 fact, caused Dugaboy, as a representative of a  
 18 majority of the Class A shareholders of  
 19 plaintiff, to enter into each of the  
 20 agreements, correct?  
 21 A. Yes.  
 22 Q. Would you agree with me that the  
 23 Promissory Notes that are the subject of the  
 24 agreements were the debtor's property?  
 25 A. I think I've stated numerous times

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1 JAMES DONDERO  
 2 due to them as that they would ultimately be  
 3 compensation; but to be a bona fide Note and to  
 4 have bona fide deferral at the time that they  
 5 were issued, they were the debtor's property.  
 6 And I guess they remained such until satisfied  
 7 or until the condition as present – the  
 8 condition subsequent is either triggered or  
 9 impossible to be triggered.  
 10 Q. Okay. Is it fair to say that the  
 11 Promissory Notes that are the subject of the  
 12 agreements were assets of the debtor at the  
 13 time you entered into the agreements?  
 14 A. Yes.  
 15 Q. At the time you entered into the  
 16 agreements, you understood that Dugaboy was  
 17 exercising control over the debtor's property,  
 18 correct?  
 19 MS. DEITSCH-PEREZ: Object to the  
 20 form.  
 21 MR. MORRIS: Withdrawn.  
 22 BY MR. MORRIS:  
 23 Q. At the time you entered into the  
 24 agreements, you understood that the Dugaboy  
 25 trustee was going to exercise control over the

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1 JAMES DONDERO  
 2 form.  
 3 THE WITNESS: I just want to – I  
 4 believe my testimony, I granted the  
 5 conditions subsequent is my interpretation.  
 6 BY MR. MORRIS:  
 7 Q. Right. And so that's fine. But  
 8 that's – that's the thing that happened, but  
 9 I'm just asking you what the impact of that  
 10 was.  
 11 When the Dugaboy trustee entered  
 12 into the agreement, the result was that the  
 13 terms and conditions of the Promissory Note  
 14 were altered, correct?  
 15 MS. DEITSCH-PEREZ: Object to the  
 16 form.  
 17 THE WITNESS: I don't want to – I  
 18 want to say I don't know to that next week.  
 19 BY MR. MORRIS:  
 20 Q. You can't – okay. You can't tell  
 21 me if your agreement with the Dugaboy trustee  
 22 altered the terms and conditions of the  
 23 Promissory Notes that were subject to the  
 24 agreement; you can't tell me that?  
 25 MS. DEITSCH-PEREZ: Object to the

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1 JAMES DONDERO  
 2 debtor's property, correct?  
 3 MS. DEITSCH-PEREZ: Object. Object  
 4 to the form.  
 5 THE WITNESS: Exercise control? I  
 6 understood the trustee had the ability to  
 7 grant the, whatever you want to call them,  
 8 conditions subsequent.  
 9 BY MR. MORRIS:  
 10 Q. On that –  
 11 A. Yes.  
 12 Q. And that was – by entering into the  
 13 agreement, would you agree with me, that the  
 14 Dugaboy trustee exercised control over the  
 15 Promissory Notes?  
 16 MS. DEITSCH-PEREZ: Object to the  
 17 form.  
 18 THE WITNESS: They – The trustee  
 19 exercised the rights given to it as a  
 20 majority of Class A holders.  
 21 BY MR. MORRIS:  
 22 Q. Okay. And is it your understanding  
 23 that as part of the right, it altered the  
 24 characteristics of the Promissory Notes?  
 25 MS. DEITSCH-PEREZ: Object to the

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1 JAMES DONDERO  
 2 form.  
 3 THE WITNESS: Yeah. I – again, it  
 4 sounds like you're trying to take me  
 5 towards legal terms of changing terms or  
 6 modification in a Note or whatever; and  
 7 I – I'm not – I don't have an opinion or  
 8 the expert to comment on that.  
 9 I can just say I knew she had the  
 10 ability to create conditions subsequent.  
 11 BY MR. MORRIS:  
 12 Q. Okay. So let's take, for example,  
 13 the Notes that you signed.  
 14 Those were demand notes, right?  
 15 A. Yes.  
 16 Q. Okay. And after you entered into  
 17 the agreement with the Dugaboy trustee, instead  
 18 of it being a demand note, it was now a demand  
 19 note subject to conditions subsequent, correct?  
 20 MS. DEITSCH-PEREZ: Object to the  
 21 form.  
 22 THE WITNESS: Yeah, that ultimately  
 23 they couldn't be demanded until conditions  
 24 subsequent were met or unable to be met.  
 25

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1 JAMES DONDERO  
 2 BY MR. MORRIS:  
 3 Q. Okay. So can you agree with me that  
 4 that – that that was a change in the term of  
 5 the Note?  
 6 MS. DEITSCH-PEREZ: Object to the  
 7 form.  
 8 THE WITNESS: Yeah. See, that's the  
 9 part I don't want to comment on. I just  
 10 want to say I don't know.  
 11 BY MR. MORRIS:  
 12 Q. Okay. Wasn't that the purpose of  
 13 entering into the agreements was to change the  
 14 terms of the each of the Promissory Notes?  
 15 Wasn't that your intent?  
 16 MS. DEITSCH-PEREZ: Object to the  
 17 form.  
 18 THE WITNESS: I'd say the intent was  
 19 to find and make compensation appropriate  
 20 for industry standards and Highland in  
 21 particular.  
 22 BY MR. MORRIS:  
 23 Q. And did you believe that the Notes  
 24 as originally drafted and signed by you or the  
 25 representatives of the makers didn't take that

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1 JAMES DONDERO  
 2 don't have specific recollection.  
 3 Q. Is that answer the same for all  
 4 three agreements or only for the first  
 5 agreement?  
 6 A. That would be the same for all  
 7 three.  
 8 Q. So then why – why does paragraph 82  
 9 refer to sometime between December of the year  
 10 in which each note was made and February of the  
 11 following year if your best recollection is  
 12 that it happened around the holidays?  
 13 A. I don't know.  
 14 Q. All right. But as you sit here  
 15 right now, is it your testimony that you  
 16 believe each of the agreements was signed –  
 17 was more likely signed in December rather than  
 18 January or February?  
 19 MS. DEITSCH-PEREZ: Object to the  
 20 form.  
 21 THE WITNESS: I think signed is a –  
 22 I'm not – I'm not testifying that signed,  
 23 I guess.  
 24 BY MR. MORRIS:  
 25 Q. I apologize. Maybe that was my

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1 JAMES DONDERO  
 2 into account?  
 3 A. I went through this already last  
 4 time, but the Notes were intentionally loose  
 5 and, I think, anticipated the ability to adjust  
 6 the subsequent conditions or other things.  
 7 Q. Now, you told me that each of the  
 8 agreements was entered into between December of  
 9 one year or – actually, withdrawn.  
 10 If we look at paragraph 82, it says  
 11 that each of the agreements was made, quote,  
 12 "sometime between the December of the year in  
 13 which each note was made and February of the  
 14 following year."  
 15 Do I have that right?  
 16 A. Yes.  
 17 Q. Can you identify with any greater  
 18 specificity when you entered into the first  
 19 agreement with the Dugaboy trustee referenced  
 20 in paragraph 82?  
 21 A. No.  
 22 Q. It's sometime within that 90-day  
 23 period; does that sound right to you?  
 24 A. I believe it was closer to the  
 25 holidays around the turn of the year, but I

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1 JAMES DONDERO  
 2 mistake.  
 3 Is it your testimony that each –  
 4 that you entered each of the agreements with  
 5 the Dugaboy trustee in December rather than  
 6 January or February of the years indicated?  
 7 A. That's the best of my recollection,  
 8 but there may have been one year that was  
 9 towards the wider end of the interval. I can't  
 10 remember with more specificity.  
 11 Q. Okay. Do you know of anything that  
 12 memorialized the date on which you entered into  
 13 any of the agreements?  
 14 A. No, other than – no, other than –  
 15 no, other than, you know, other than travel  
 16 schedule or phone logs or whatever.  
 17 Q. All right. During the discussion  
 18 that led to the agreements, did you ever  
 19 provide any information to Nancy or to Dugaboy  
 20 concerning your compensation?  
 21 A. Just – just verbal. I mean, she  
 22 knew it was low, and she knew we had reinvested  
 23 most everything we made back in the company  
 24 over the years. And that was the – that was,  
 25 I think, understanding by all involved; and it

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1 JAMES DONDERO  
 2 should be obvious to anybody who's looked at  
 3 the numbers even in hindsight.  
 4 MR. MORRIS: Okay. I move to  
 5 strike.  
 6 BY MR. MORRIS:  
 7 Q. And please listen carefully to my  
 8 question.  
 9 During the discussions that led to  
 10 each of the agreements, did you ever provide  
 11 any information to your sister or Dugaboy  
 12 concerning your compensation?  
 13 MS. DEITSCH-PEREZ: Asked and  
 14 answered.  
 15 THE WITNESS: Not specifically.  
 16 BY MR. MORRIS:  
 17 Q. Did you provide any general  
 18 information to your sister or to Dugaboy prior  
 19 to the entry of any of the three agreements  
 20 that you entered into with the Dugaboy trustee?  
 21 A. I would repeat the answer that was  
 22 struck two questions ago.  
 23 Q. That's the information that you gave  
 24 to her?  
 25 A. Yeah. It was -- again, it was

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1 JAMES DONDERO  
 2 relative to Dugaboy.  
 3 Q. Did you tell her anything else?  
 4 A. Anything else would have fallen into  
 5 the buckets I just described, but I can't  
 6 remember specifically as I sit here today.  
 7 Q. Did you ever tell your sister or  
 8 Dugaboy that your salary was less than a  
 9 million dollars?  
 10 A. I --  
 11 MS. DEITSCH-PEREZ: I mean, just  
 12 from Highland?  
 13 THE WITNESS: Repeat the question  
 14 again for me, please.  
 15 BY MR. MORRIS:  
 16 Q. Did you ever tell your sister that  
 17 your salary was less than a million dollars a  
 18 year?  
 19 A. I know my sister was aware that it  
 20 was very low, and it kind of decreased over  
 21 time, and I think it was paid by different  
 22 entities.  
 23 Whether it was a million or  
 24 2 million, I can't remember exactly what I  
 25 would have told her; but it would have been in

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1 JAMES DONDERO  
 2 verbal, and it was -- but an understanding but  
 3 a clear and obvious understanding.  
 4 Q. I want to know exactly what  
 5 information you gave to your sister and to  
 6 Dugaboy before entering into any of the three  
 7 agreements with the Dugaboy trustee?  
 8 A. Most of what I had made over the  
 9 years was rolled back into the business to  
 10 propel growth and initiatives. And that my  
 11 actual compensation was very modest based on  
 12 industry standards and relevant  
 13 responsibilities at Highland.  
 14 Q. Did you tell her anything else?  
 15 Withdrawn.  
 16 Did you tell your -- Nancy or  
 17 Dugaboy anything else beyond what you've now  
 18 testified to?  
 19 A. You know, I think some of what I  
 20 testified to earlier, that forgiveness of the  
 21 Notes would be a modest increase in that  
 22 compensation but still not be in the ZIP code  
 23 of fair and appropriate compensation and that  
 24 the value of the Notes in aggregate were de  
 25 minimis relative to Highland and de minimis

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1 JAMES DONDERO  
 2 that ZIP code to paint the proper picture that  
 3 the cash compensation for somebody in my role  
 4 was well below industry standards.  
 5 Q. Do you recall anything else that you  
 6 shared with your sister concerning your  
 7 compensation that you haven't testified to?  
 8 A. Like I said, it would generally fall  
 9 into those buckets as I sit here today.  
 10 Q. Did your sister or Dugaboy ask you  
 11 any questions about your compensation before  
 12 entering into the three agreements that you  
 13 entered into with the Dugaboy trustee?  
 14 A. And, again, it would fall into the  
 15 buckets I just described.  
 16 Q. Can you -- can you recall any  
 17 question that your sister or Dugaboy asked of  
 18 you concerning your compensation before  
 19 entering into the agreements?  
 20 MS. DEITSCH-PEREZ: Asked answered.  
 21 THE WITNESS: Again, I -- it would  
 22 fall into the buckets I just described.  
 23 BY MR. MORRIS:  
 24 Q. Did you provide any documents to  
 25 your sister or to Dugaboy concerning your



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1 JAMES DONDERO  
 2 compensation before entering into the  
 3 agreements?  
 4 A. No, not that I can recall.  
 5 Q. Did your sister or Dugaboy ask you  
 6 for any documents before entering into -- into  
 7 any of the agreements?  
 8 A. I do not -- I do not believe so.  
 9 Q. Do you recall that in the ordinary  
 10 course of business, Highland prepared a  
 11 document called a Compensation and Benefits  
 12 Statement for each of its employees?  
 13 A. Yes.  
 14 Q. And was that prepared by the Human  
 15 Resources Group?  
 16 A. Yes.  
 17 Q. And was Mark Collins the head of the  
 18 Human Resources Group?  
 19 A. No.  
 20 Q. Who was the head of the Human  
 21 Resources Group?  
 22 A. Brian Collins.  
 23 Q. I apologize to Mr. Collins. Thank  
 24 you for the correction.  
 25 And Mr. Collins and his team were

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1 JAMES DONDERO  
 2 (Whereupon, Exhibit 68, James  
 3 Dondero Compensation and Benefits  
 4 Statement, Bates stamped D-CNL003585,  
 5 marked for identification, as of this  
 6 date.)  
 7 BY MR. MORRIS:  
 8 Q. Do you see the document that's been  
 9 premarked as Exhibit 68 that's up on the  
 10 screen, sir?  
 11 A. Yup.  
 12 Q. And does this appear to be the form  
 13 of annual Compensation and Benefits Statement  
 14 that Mr. Collins and his team prepared on an  
 15 annual basis for Highland's employees?  
 16 A. This looks like the format, yes.  
 17 Q. Okay. And the Compensation and  
 18 Benefits Statement was intended to set forth  
 19 the types and the amounts of compensation each  
 20 employee received each year, correct?  
 21 A. Yes, generally.  
 22 Q. Okay. Did you ever disclose any  
 23 information on this page to Nancy or to  
 24 Dugaboy?  
 25 A. Honestly, I don't think I've ever

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1 JAMES DONDERO  
 2 responsible for preparing the annual  
 3 Compensation and Benefits Statements for  
 4 Highland's employees, correct?  
 5 A. Yes.  
 6 Q. And did you instruct them to do  
 7 that?  
 8 A. Not specifically.  
 9 Q. Okay.  
 10 A. They do it every year. They do it  
 11 every year as a matter of course, so I guess no  
 12 is the answer.  
 13 Q. Okay. So in the ordinary course of  
 14 business, Mr. Collins and his team would  
 15 prepare Compensation and Benefits Statements  
 16 for each of Highland's employees on an annual  
 17 basis, right?  
 18 A. Yes.  
 19 Q. Okay.  
 20 MR. MORRIS: Can we please put up  
 21 Exhibit 68.  
 22 MS. CANTY: (Complies with request.)  
 23  
 24  
 25

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1 JAMES DONDERO  
 2 seen my award letters before.  
 3 Q. Okay. So you never -- so then it's  
 4 a fair to say you never showed this letter to  
 5 your sister or to Dugaboy, correct?  
 6 A. Correct.  
 7 Q. Okay. Did you ever disclose to  
 8 Nancy or to Dugaboy the salary that's reflected  
 9 on this document?  
 10 A. I can't remember specifically beyond  
 11 what I've already testified.  
 12 Q. Did you ever describe for Nancy or  
 13 for Dugaboy the 2016 deferred compensation  
 14 award that's reflected on this document?  
 15 A. No. I -- by the way, I think that's  
 16 only 20 percent vested a year. I think that's  
 17 a gross amount. But no, I never -- I never  
 18 discussed that with her.  
 19 Q. Okay. Do you see in the  
 20 compensation award refers to 50,000 restricted  
 21 stock units of NXRT relating to your 2016  
 22 performance?  
 23 A. Yes.  
 24 Q. What is NXRT?  
 25 A. That's the REIT that Highland used

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1 JAMES DONDERO  
 2 to own million shares of that series hold at 20  
 3 that now trade at 70.  
 4 Q. And is NexPoint REIT affiliated with  
 5 NexPoint Advisors, L.P.?  
 6 A. Yes.  
 7 Q. And do you have an understanding of  
 8 the nature of the relationship?  
 9 A. Yes.  
 10 Q. And what's -- what's your  
 11 understanding of the nature of the relationship  
 12 between NexPoint REIT and NexPoint Advisors,  
 13 L.P.?  
 14 A. It's the external manager of the  
 15 REIT.  
 16 Q. Okay. Did you ever tell Nancy or  
 17 Dugaboy that you had received these restricted  
 18 stock units in 2016?  
 19 A. No. But again, the vested amount  
 20 would have probably been about \$250,000 worth  
 21 at that moment.  
 22 Q. And did it vest over a couple of  
 23 years?  
 24 A. The first couple of years is vested  
 25 over five years. I think now it vests over six

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1 JAMES DONDERO  
 2 statement for 2017?  
 3 A. Yes.  
 4 Q. Did you ever disclose any of the  
 5 information on this page to Nancy or to  
 6 Dugaboy?  
 7 A. No.  
 8 Q. Did you ever disclose to Nancy or to  
 9 Dugaboy that your base salary in 2017 was  
 10 2,500,024?  
 11 MS. DEITSCH-PEREZ: Object to the  
 12 form.  
 13 THE WITNESS: Not specifically, no,  
 14 other than the buckets we talked about  
 15 earlier.  
 16 Like I said earlier, I'm not sure if  
 17 I have ever seen these before. But I also  
 18 -- until it's verified, I don't want to --  
 19 everybody to assume that the base salary  
 20 came a hundred percent from Highland or if  
 21 it was also from some other entity.  
 22 Because for the purposes of this letter,  
 23 Brian Collins wouldn't have -- we have  
 24 numerous or several employees that are dual  
 25 employees. And whether their base salary

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1 JAMES DONDERO  
 2 or seven years. I don't remember whether the  
 3 2016 award was five years, six years, or seven  
 4 years.  
 5 Q. Okay. We talked earlier about an  
 6 expert that's been retained on your behalf.  
 7 Do you remember that?  
 8 A. Yes.  
 9 Q. Do you recall if you or anybody  
 10 acting on your behalf ever disclosed to that  
 11 expert the restricted stock units reflected on  
 12 this document?  
 13 MS. DEITSCH-PEREZ: Object to the  
 14 form.  
 15 THE WITNESS: I don't know.  
 16 MR. MORRIS: Let's put up  
 17 Exhibit 50, please.  
 18 MS. CANTY: (Complies with request.)  
 19 (Whereupon, Exhibit 50, James  
 20 Dondero Compensation and Benefits  
 21 Statement, Bates stamped D-CNL003587,  
 22 marked for identification, as of this  
 23 date.)  
 24 BY MR. MORRIS:  
 25 Q. Do you see this is your benefits

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1 JAMES DONDERO  
 2 came from one or multiple entities, he  
 3 wouldn't have differentiated in that line.  
 4 So I don't know whether that amount,  
 5 that 2.5 million came from Highland or a  
 6 combination of Highland/NexPoint or some  
 7 other entities. I don't know.  
 8 BY MR. MORRIS:  
 9 Q. And who made the decision as to how  
 10 to allocate the base salary?  
 11 A. I don't know. I -- I mean, I don't  
 12 know how it was split. But my recollection of  
 13 my Highland base salary is that it was  
 14 diminishing over time.  
 15 Q. And -- and as the president of  
 16 Highland and as the president of NexPoint, did  
 17 you have any say as to how your salary was  
 18 allocated between those two entities?  
 19 A. Not that I recall.  
 20 Q. Do you have any idea the basis on  
 21 which your salary was allocated between those  
 22 two entities?  
 23 A. No.  
 24 Q. Do you think -- do -- do you have  
 25 any understanding that it was allocated based

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1 JAMES DONDERO  
 2 on the amount of time you spent working for  
 3 each of those entities?  
 4 A. I have no idea.  
 5 Q. If your salary was \$500,000 from  
 6 Highland in 2017 and \$2 million to NexPoint,  
 7 can you – can you think of any reason why it  
 8 would be allocated in that way?  
 9 MS. DEITSCH-PEREZ: Object to the  
 10 form.  
 11 THE WITNESS: Cash, cash  
 12 availability. I – I don't know.  
 13 BY MR. MORRIS:  
 14 Q. Okay. Did you devote your full time  
 15 and attention to Highland Capital Management,  
 16 L.P.?  
 17 A. I spread my time as appropriate  
 18 across a variety of entities.  
 19 Q. Can you identify for me the entities  
 20 that you spread your time across?  
 21 A. Highland, NexPoint, HCMFA, HCRE.  
 22 Q. How about Highland Management  
 23 Services, Inc.?  
 24 A. Yes.  
 25 Q. Are there any others?

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1 JAMES DONDERO  
 2 MS. DEITSCH-PEREZ: Yeah. On a  
 3 break, I'll take a picture of it and send  
 4 it to you.  
 5 Do you want a break now?  
 6 MR. MORRIS: I really – I really  
 7 don't. And I don't know why I can't get an  
 8 e-mail copy rather than a photograph. It's  
 9 not going to be – it's not going to be  
 10 easy to read, and you know that?  
 11 MS. DEITSCH-PEREZ: It'll be  
 12 perfectly fine. If you can't, let me know;  
 13 and then I'll take the time to try and find  
 14 it. But the fastest way to get it to you  
 15 is to take a picture of it.  
 16 BY MR. MORRIS:  
 17 Q. Mr. Dondero, did you ever tell Nancy  
 18 or Dugaboy that you had received the restricted  
 19 stock units from the NexPoint REIT as reflected  
 20 on this page?  
 21 A. You're – you're saying the  
 22 \$1.55-million number that was really 200,000  
 23 vested or 300,000 vested?  
 24 Q. No. I'm not talking about the  
 25 value. I'm just talking about the restricted

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1 JAMES DONDERO  
 2 A. Yes.  
 3 Q. Can you identify any other companies  
 4 to which you devoted your time and attention?  
 5 A. Not off the top of my head. I'm  
 6 willing to be refreshed. But over the years  
 7 there's been multiple initiatives at Highland  
 8 that have come and gone and private equity  
 9 companies that have come and gone and other  
 10 initiatives that have come and gone.  
 11 Q. Do you see the reference to the  
 12 65,772 restricted stock units of the NexPoint  
 13 REIT there on this document?  
 14 A. Yes.  
 15 Q. And was that, to the best of your  
 16 recollection, the award that you were granted  
 17 in connection with your 2017 performance?  
 18 A. It would have been for – it would  
 19 have been the prior awards at – it would have  
 20 been for the prior years' awards at NFLP. And  
 21 it would have been – it would have been the  
 22 same five- or seven-year vesting schedule.  
 23 MR. MORRIS: Now I'm looking at my  
 24 phone, and I don't see, Deborah, any e-mail  
 25 from your firm.

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1 JAMES DONDERO  
 2 units.  
 3 Did you ever tell them – let's keep  
 4 it – let's keep it simple, and let's make it  
 5 really broad.  
 6 Did you ever tell Nancy or Dugaboy  
 7 that you received restricted stock units as  
 8 part of your compensation?  
 9 A. I – I don't remember.  
 10 Q. Okay. Did you ever – because this  
 11 will speed it up.  
 12 Did you ever tell your expert that  
 13 you received restricted stock units as part of  
 14 your compensation?  
 15 MS. DEITSCH-PEREZ: Object to the  
 16 form.  
 17 THE WITNESS: I don't – I don't  
 18 remember.  
 19 BY MR. MORRIS:  
 20 Q. Did you ever direct anyone acting on  
 21 your behalf to share with your expert that you  
 22 had received restricted stock units as a form  
 23 of compensation?  
 24 MS. DEITSCH-PEREZ: Object to the  
 25 form.

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1 JAMES DONDERO  
 2 THE WITNESS: I not – I wasn't  
 3 involved.  
 4 MR. MORRIS: All right. You know,  
 5 what, Deborah, let's take a break; and why  
 6 don't you send me that document.  
 7 It is now 3:28. Let's come back at  
 8 3:40 Eastern, and let's please be on time  
 9 because I'd like to try to finish this  
 10 today. Thank you.  
 11 THE VIDEOGRAPHER: Off the record at  
 12 2:28.  
 13 (Whereupon, a break was taken.)  
 14 THE VIDEOGRAPHER: We are back on  
 15 the record. The time is 2:43.  
 16 MR. MORRIS: I received from counsel  
 17 a photograph in text message form of the  
 18 document that Mr. Dondero was referring to  
 19 at the beginning of the deposition.  
 20 I'm going to ask for that production  
 21 – for the production of that document with  
 22 a Bates number by the end of the day, and I  
 23 hope that could be accommodated.  
 24 MS. DEITSCH-PEREZ: I'm not sure –  
 25 John, I'm not sure it will be by the end of

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1 JAMES DONDERO  
 2 to you by e-mail instead.  
 3 MR. MORRIS: I'd like to proceed.  
 4 You can e-mail it to me. I mean, I  
 5 asked you to do that an hour ago.  
 6 MS. DEITSCH-PEREZ: Well, the  
 7 easiest way to do it is to send a picture  
 8 is to text it; but if you give me a minute,  
 9 I'll figure out how to send it by e-mail.  
 10 Give me a second. Let's see.  
 11 It just takes a second because it  
 12 goes into my personal e-mail first if it's  
 13 from my iPhone. Okay.  
 14 MR. MORRIS: Can we proceed?  
 15 MS. DEITSCH-PEREZ: Yeah. Give me a  
 16 minute and you'll have it.  
 17 Okay. You should have it in your  
 18 e-mail now, John.  
 19 MR. MORRIS: Thank you. All right.  
 20 I'll let you know when it arrives.  
 21 BY MR. MORRIS:  
 22 Q. Mr. Dondero, the questions now are  
 23 going to be both in your individual capacity  
 24 and in your capacity as the 30(b)(6) witness.  
 25 Do you understand that?

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1 JAMES DONDERO  
 2 the day because I don't know when the  
 3 people who do the Bates stamping leave.  
 4 But if it's not today, it will be tomorrow.  
 5 MR. MORRIS: All right. It's 2:44  
 6 in the afternoon your time. I hope that  
 7 your firm has the capability of Bates  
 8 stamping and producing one page before the  
 9 close of business.  
 10 MS. DEITSCH-PEREZ: Okay. But I'm  
 11 not going to get – John, what difference  
 12 does it make whether it's tonight or  
 13 tomorrow?  
 14 MR. MORRIS: You know what, I really  
 15 want to use it in the deposition now, but I  
 16 can't do that because – because you're not  
 17 able – because you – because apparently,  
 18 you can't even promise to do it by the end  
 19 of the day.  
 20 BY MR. MORRIS:  
 21 Q. Mr. Dondero –  
 22 MS. DEITSCH-PEREZ: Could you –  
 23 could you use it –  
 24 MR. MORRIS: I'd like to –  
 25 MS. DEITSCH-PEREZ: – if I sent it

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1 JAMES DONDERO  
 2 A. Okay.  
 3 Q. Okay.  
 4 A. It's either – it's either/or; it's  
 5 not one?  
 6 Q. No.  
 7 A. Okay.  
 8 Q. You contend that the Notes are  
 9 subject to the – withdrawn.  
 10 You contend that the Notes that are  
 11 the subject of the agreements would be forgiven  
 12 upon the fulfillment of certain conditions  
 13 present, right?  
 14 A. Right.  
 15 MS. DEITSCH-PEREZ: Object to the  
 16 form. He said "subsequent."  
 17 MR. MORRIS: I apologize. Let me  
 18 restate the question.  
 19 BY MR. MORRIS:  
 20 Q. You contend that the Notes subject  
 21 to the agreement should be forgiven or would be  
 22 forgiven upon the fulfillment of certain  
 23 conditions subsequent, correct?  
 24 A. Yes.  
 25 Q. And to the best of your knowledge,

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1 JAMES DONDERO  
 2 none of those conditions have occurred as of  
 3 today, correct?  
 4 A. To the best of my knowledge, yes.  
 5 Q. Okay. You're not aware of any facts  
 6 showing that any of the conditions subsequent  
 7 have been satisfied, fair?  
 8 A. I – yeah. I wouldn't know. You  
 9 would probably know. I don't know.  
 10 Q. I'm only asking for your knowledge.  
 11 One of the conditions subsequent was  
 12 that the Notes would be forgiven if you caused  
 13 Highland to sell its interest in one of three  
 14 portfolio companies above cost, right?  
 15 MS. DEITSCH-PEREZ: Object to the  
 16 form.  
 17 THE WITNESS: I – yeah. I don't  
 18 know if the noun is me or Highland, but  
 19 yeah.  
 20 BY MR. MORRIS:  
 21 Q. Okay. The portfolio companies at  
 22 issue were MGM, Comerstone, and Trustway,  
 23 correct?  
 24 A. Yes.  
 25 Q. And prior to the petition date, you

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1 JAMES DONDERO  
 2 With regard to Comerstone, a  
 3 majority of it – or not a majority, but a  
 4 significant minority, I think, was owned by  
 5 both Restoration and the Old Redeemer Fund.  
 6 Q. All right. Well, let me ask you  
 7 this: The conditions subsequent that are  
 8 embedded in the agreements, did that relate to  
 9 just Highland's interests in the portfolio  
 10 companies, or did it relate to interests held  
 11 by anybody else?  
 12 A. It referred to a monetization in  
 13 creating liquidity around Highland's interests  
 14 that were large and illiquid portions of  
 15 Highland's balance sheet.  
 16 Q. Okay. So let me ask the question  
 17 again.  
 18 Prior to the petition date, did you  
 19 have the authority to sell Highland's interests  
 20 in any of the portfolio companies without  
 21 having to obtain the authority of anybody else?  
 22 MS. DEITSCH-PEREZ: Object to the  
 23 form. Asked and answered.  
 24 THE WITNESS: Sub- – subject to my  
 25 prior answer, I could speak for Highland

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1 JAMES DONDERO  
 2 had the authority to sell any of those  
 3 portfolio companies at any time without having  
 4 to obtain approval from anyone, correct?  
 5 MS. DEITSCH-PEREZ: Object to the  
 6 form.  
 7 THE WITNESS: Yeah. No, I can't  
 8 agree with that statement.  
 9 BY MR. MORRIS:  
 10 Q. Why not?  
 11 Who's approval did you have to get  
 12 before you could sell any of those portfolio  
 13 companies?  
 14 A. MGM, I was one board member and I  
 15 think an aggregate. When I was running  
 16 Highland, we spoke for 18 percent of the  
 17 equity. So I couldn't force the overall sale  
 18 of the company unilaterally.  
 19 There was also a shareholder's  
 20 agreement in place that restricted myself and  
 21 Anchorage and a couple of the large holders  
 22 from selling their shares without a disclosure  
 23 and approval process. That is one example.  
 24 With regard to Trustway, I believe I  
 25 was largely unfettered.

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1 JAMES DONDERO  
 2 prior to the bankruptcy.  
 3 BY MR. MORRIS:  
 4 Q. Okay. Before entering into the  
 5 agreements, did you or anybody acting on your  
 6 behalf analyze the likelihood that any of the  
 7 conditions subsequent would occur?  
 8 A. Likelihood? Analyze? My  
 9 description of them, which was my understanding  
 10 of them, but my description of the assets to my  
 11 sister was – to the trustee of Dugaboy was  
 12 that we held them for a long time. We were  
 13 working towards monetization, but there wasn't  
 14 anything imminent regarding any of them in 2017  
 15 or '18.  
 16 Q. Well, but the actual sale is just  
 17 one part of the condition subsequent, correct?  
 18 The other part is that it's got to  
 19 be sold above cost; is that correct?  
 20 A. That is right.  
 21 Q. Okay. So at the time you entered  
 22 into each of your – each of the three  
 23 agreements, had you done any analysis to  
 24 determine whether or not any – whether  
 25 Highland's interests in any of the portfolio

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1 JAMES DONDERO  
 2 companies exceeded its cost?  
 3 A. No, but I – yes. No, I did not.  
 4 Q. Did you have any understanding at  
 5 all as to how the value of Highland's interests  
 6 in MGM compared to its costs at the time you  
 7 entered into each of these three agreements?  
 8 A. No. I mean, my understanding was I  
 9 knew they were substantially higher, but I  
 10 didn't know how much higher.  
 11 Q. Okay. So is it fair to say that the  
 12 time – at the time you entered into each of  
 13 these agreements, you knew and understood that  
 14 the value of Highland's interests in MGM was  
 15 substantially higher than its costs?  
 16 A. For MGM, yes.  
 17 Q. Okay. Did you have an understanding  
 18 of the relationship between value and costs  
 19 concerning Comerstone at the time you entered  
 20 into these agreements?  
 21 A. My understanding it was moderately  
 22 higher, and Trustway was between substantially  
 23 and moderately and higher, I believe.  
 24 Q. Okay. So is it fair to say that at  
 25 the time you entered into each of these

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1 JAMES DONDERO  
 2 MS. DEITSCH-PEREZ: Object to the  
 3 form.  
 4 THE WITNESS: I – I remember saying  
 5 it would take a few years at minimum; but  
 6 other than expressing time, I don't believe  
 7 I expressed value versus cost or the  
 8 questions you were asking me previously.  
 9 BY MR. MORRIS:  
 10 Q. Okay. You never showed Nancy or  
 11 Dugaboy any of the Promissory Notes prior to  
 12 entering into any of the agreements, correct?  
 13 A. Not that I recall.  
 14 Q. And you never sent copies of the  
 15 Promissory Notes to Nancy or Dugaboy before  
 16 entering into any of these agreements, correct?  
 17 A. Not that I recall.  
 18 MS. DEITSCH-PEREZ: Object to the  
 19 form.  
 20 John, you've asked these at the last  
 21 deposition and actually also at the first  
 22 day of the deposition.  
 23 MR. MORRIS: Thank you. He's here  
 24 now in his 30(b)(6) capacity. So please  
 25 just stop.

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1 JAMES DONDERO  
 2 agreements, you believed that the value of  
 3 Highland's interests in each of the portfolio  
 4 companies exceeded its costs in varying  
 5 degrees?  
 6 A. Varying degrees. As a matter of  
 7 fact, I would adjust. Comerstone and  
 8 Trustway, I believe, were moderately higher  
 9 than their embedded costs or implied costs.  
 10 That was my understanding.  
 11 MGM was somewhat substantially. But  
 12 all of them with a fair amount of volatility  
 13 and a fair amount of illiquidity.  
 14 Q. Did you ever give your sister or  
 15 Dugaboy any information concerning how the  
 16 value of Highland's interests in any of the  
 17 portfolio companies compared to Highland's  
 18 costs before entering into the agreements?  
 19 A. Not that I recall.  
 20 Q. Do you have any reason to believe  
 21 that your sister or Dugaboy had any  
 22 understanding as to the likelihood that the  
 23 conditions subsequent would be satisfied at the  
 24 time the Dugaboy trustee entered into the three  
 25 agreements with you?

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1 JAMES DONDERO  
 2 You can object to the form of the  
 3 question. I really don't appreciate it.  
 4 You should follow the very professional job  
 5 that your colleague, Michael Aigen, did the  
 6 other day.  
 7 BY MR. MORRIS:  
 8 Q. Neither Nancy or Dugaboy has ever  
 9 asked to see copies of any of the Promissory  
 10 Notes before entering into any of the  
 11 agreements, correct?  
 12 MS. DEITSCH-PEREZ: Object to the  
 13 form.  
 14 THE WITNESS: I don't know.  
 15 BY MR. MORRIS:  
 16 Q. Do you have any reason to believe  
 17 that Nancy or Dugaboy ever saw a copy of any of  
 18 the Promissory Notes at issue before entering  
 19 into the agreements?  
 20 A. I don't know.  
 21 Q. During your discussions with Nancy  
 22 and Dugaboy, did you identify the Promissory  
 23 Notes that were going to be the subject of each  
 24 agreement?  
 25 MS. DEITSCH-PEREZ: Object to the

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1 JAMES DONDERO  
 2 form.  
 3 You know, we made an agreement that  
 4 you were going to refer to Nancy as the  
 5 Dugaboy trustee. Please stick to it.  
 6 Otherwise, I'm going to have to object each  
 7 time, and I'd rather not.  
 8 MR. MORRIS: I have no problem with  
 9 your objecting to the form of the question.  
 10 It's the speaking that I really do object  
 11 to. And I don't know why you can't control  
 12 yourself.  
 13 MS. DEITSCH-PEREZ: Because I  
 14 hope that –  
 15 MR. MORRIS: Please stop. Please  
 16 stop.  
 17 MS. DEITSCH-PEREZ: – by telling  
 18 you this, you will listen.  
 19 MR. MORRIS: Okay. Your discussion  
 20 and your inability to control yourself is  
 21 going to cause this deposition to go longer  
 22 than it needs to, okay?  
 23 MS. DEITSCH-PEREZ: No. It's your  
 24 repeating questions that's going to do  
 25 that.

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1 JAMES DONDERO  
 2 know what your question is. Did I identify  
 3 specifically that they were Notes due to  
 4 Highland? I guess the answer to that is yes,  
 5 but I don't know what you're asking me.  
 6 Q. I'm sorry, sir. I'll take the  
 7 responsibility for that.  
 8 I'm asking you if you identified who  
 9 the maker of the Notes were, not who the payee  
 10 was.  
 11 MS. DEITSCH-PEREZ: You mean the  
 12 borrowers, John?  
 13 THE WITNESS: See, I don't want to  
 14 get stuck in my underwear on maker/borrower  
 15 nomenclature.  
 16 She was aware that they were notes  
 17 due to Highland from a variety of entities.  
 18 BY MR. MORRIS:  
 19 Q. Okay. Did you identify any of those  
 20 entities?  
 21 A. I – yeah. She knew that some were  
 22 Dugaboy, some were NexPoint for sure, and some  
 23 were other entities.  
 24 Q. So – so there were notes where  
 25 Dugaboy owed the money or was the obligor or

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1 JAMES DONDERO  
 2 MR. MORRIS: You let me know when  
 3 you're done.  
 4 MS. DEITSCH-PEREZ: I'm done.  
 5 BY MR. MORRIS:  
 6 Q. Mr. Dondero, during your discussions  
 7 with the Dugaboy trustee, did you identify the  
 8 Promissory Notes that were going to be the  
 9 subject of each agreement?  
 10 MS. DEITSCH-PEREZ: Object to the  
 11 form.  
 12 THE WITNESS: No, not that I recall.  
 13 BY MR. MORRIS:  
 14 Q. Do you recall – during your  
 15 discussions with the Dugaboy trustee, did you  
 16 identify the maker of any of the Notes that  
 17 were the subject of any of the agreements?  
 18 A. You mean Highland as the maker, is  
 19 that what you're saying?  
 20 Q. No. I'm just asking if during your  
 21 discussions with the Dugaboy trustee, you ever  
 22 disclosed the name of the maker of any of the  
 23 Notes that were subject to the agreements?  
 24 A. She – she knew they were Notes due  
 25 to Highland from various entities. So I don't

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1 JAMES DONDERO  
 2 was the borrower or was the maker that are  
 3 subject to agreements that you entered into  
 4 with the Dugaboy trustee?  
 5 A. No. Wait. The Dugaboy – the  
 6 Dugaboy Notes weren't subject to the  
 7 forgiveness. It was the other notes that were  
 8 subject to forgiveness.  
 9 Q. So it's really kind of a simple  
 10 question, and I'm not trying to trick you.  
 11 If you think back to the  
 12 conversations that you had with the Dugaboy  
 13 trustee, did you identify the entity of – did  
 14 you identify who the borrowers were under the  
 15 Notes that were going to be subject to the  
 16 agreements?  
 17 A. She knew they were entities – she  
 18 knew there were other related entities. She  
 19 knew NexPoint for sure. She knew Services.  
 20 I can't sit here as I remember – as  
 21 I sit here today and remember whether or not I  
 22 specifically identified HCRE or not, you know;  
 23 but she knew they were related entities.  
 24 Q. All of the revisions of the  
 25 agreement are set forth in paragraph 82; is

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1 JAMES DONDERO  
 2 that right?  
 3 We could put it back up on the  
 4 screen if you'd like.  
 5 MR. MORRIS: In fact, why don't we  
 6 do that.  
 7 MS. CANTY: I'm sorry, John. 51 –  
 8 I mean, 50?  
 9 MR. MORRIS: I think it's  
 10 Exhibit 31, paragraph 82.  
 11 MS. CANTY: Oh, okay, 82. I've got  
 12 you.  
 13 MR. MORRIS: Thank you.  
 14 BY MR. MORRIS:  
 15 Q. Does – Mr. Dondero, other than  
 16 specifying who the portfolio companies were,  
 17 does paragraph 82 set forth all of the material  
 18 terms of each of the agreements?  
 19 A. I think it sets forth the conditions  
 20 subsequent.  
 21 Q. Is there any aspect of your  
 22 agreement – withdrawn.  
 23 Is there any aspect of your  
 24 agreements with the Dugaboy trustees that's not  
 25 described in this paragraph?

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1 JAMES DONDERO  
 2 form.  
 3 THE WITNESS: I don't believe it was  
 4 materially adjusted by any negotiation. It  
 5 was just clarified based on discussion is  
 6 how I would describe it.  
 7 BY MR. MORRIS:  
 8 Q. Is there any provision in the  
 9 agreements that was included at your sis- – at  
 10 the Dugaboy trustee's request?  
 11 A. Like I said, there was discussion  
 12 and clarification. Not specifically that I  
 13 recall.  
 14 Q. Okay. Did the Dugaboy trustee  
 15 refuse to include any provision in the  
 16 agreement that you had proposed?  
 17 A. Not that I recall.  
 18 Q. Can you identify any provision of  
 19 the agreements that were the subject of a  
 20 counterproposal that the Dugaboy trustee made?  
 21 A. I remember clarification discussion  
 22 around, you know, three companies versus two or  
 23 one. I remember clarification of monetization  
 24 being turned to cash versus illiquid.  
 25 Yeah. I mean, I remember

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1 JAMES DONDERO  
 2 A. I don't know if it's captured in  
 3 there, but there was definitely a conversation,  
 4 discussion that if something like MGM was  
 5 sold – Anchorage is the largest holder almost  
 6 a majority in and of themselves. And if it was  
 7 bought or taken out at a price that we couldn't  
 8 control or couldn't agree with and it was lower  
 9 than cost or – you know, Comerstone, again,  
 10 had multiple funds between our ownership and  
 11 control that if – if things were sold  
 12 beyond – without my support but sold below  
 13 cost – and I'm not sure that's captured in  
 14 that paragraph, but I think that was part of  
 15 the understanding, also.  
 16 Q. Is there any other part of the  
 17 understanding that's not set forth in  
 18 paragraph 82, Mr. Dondero?  
 19 A. Not that I can think of at this –  
 20 let me read it one more time, please.  
 21 Q. Take your time.  
 22 A. I believe that generally covers it.  
 23 Q. Was any provision of the agreements  
 24 the subject of negotiation?  
 25 MS. DEITSCH-PEREZ: Object to the

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1 JAMES DONDERO  
 2 discussion – I remember clarification  
 3 discussions like that, but I don't remember –  
 4 it was a long time ago. I don't remember the  
 5 details of anything specific like that.  
 6 It wasn't – it wasn't a  
 7 contentious, nor should it have been a  
 8 contentious negotiation.  
 9 Q. How long did – do you recall how  
 10 long each of the conversations lasted that led  
 11 to the entry of each of the three agreements?  
 12 A. I remember the first one being  
 13 longer than the second two, and then I remember  
 14 it being spread out periods of time. So I  
 15 can't – I can't – I can't put an exact  
 16 estimate on it.  
 17 Q. Okay. I'm going to shift gears.  
 18 MR. MORRIS: We can take that down  
 19 now, please.  
 20 MS. CANTY: (Complies with request.)  
 21 BY MR. MORRIS:  
 22 Q. Do you know of any written agreement  
 23 pursuant to which HCRE provided services to  
 24 Highland at any time?  
 25 MS. DEITSCH-PEREZ: Object to the



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1 JAMES DONDERO  
 2 form. Asked and answered.  
 3 THE WITNESS: HCRE provided  
 4 preferred services to. Well, the  
 5 participants there in HCRE are, my –  
 6 myself and McGraner. And, you know, we  
 7 both provided significant other services to  
 8 Highland.  
 9 BY MR. MORRIS:  
 10 Q. Okay. Is that in writing? Is there  
 11 a written agreement?  
 12 That was my question.  
 13 Is there a written agreement  
 14 pursuant to which HCRE ever provided services  
 15 to Highland?  
 16 A. I don't believe so.  
 17 Q. Did HCRE ever provide services to  
 18 Highland?  
 19 A. I would incorporate my last two  
 20 answers. Not under a written agreement, but I  
 21 believe myself and McGraner provided a lot of  
 22 services.  
 23 Q. And what services did you and Mr.  
 24 McGraner provide to Highland?  
 25 A. I'd say anything real estate related

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1 JAMES DONDERO  
 2 leadership contributions to Highland are  
 3 well documented.  
 4 BY MR. MORRIS:  
 5 Q. And my question didn't have anything  
 6 to do with any particular person. It's just  
 7 simply whether Highland Capital Management  
 8 Services ever provided any services to Highland  
 9 Capital Management, L.P.  
 10 MS. DEITSCH-PEREZ: Object to the  
 11 form.  
 12 THE WITNESS: The entities that  
 13 you're describing or you're asking  
 14 questions about don't have employees'  
 15 services in HCRE. They have ownership  
 16 individuals that I've described.  
 17 So I've tried the best I can to  
 18 answer your question and what the ownership  
 19 may have done for Highland.  
 20 But since there's no employee base  
 21 at either of those two companies, those  
 22 companies could not have directly provided  
 23 service to Highland other than, the last  
 24 thing I would bring up is the track-record  
 25 concept, you know, in terms of the

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1 JAMES DONDERO  
 2 on the Highland platform McGraner would have  
 3 input into.  
 4 And then I think my – my portfolio  
 5 management, leadership role in Highland over  
 6 time is well documented.  
 7 Q. And how did you know if you were  
 8 providing services in your capacity as the  
 9 president of Highland or in your capacity as an  
 10 officer or owner of the HCRE at the time you  
 11 provided the services?  
 12 A. Never – never really thought about  
 13 parsing it that way.  
 14 Q. I appreciate that.  
 15 Do you know whether Highland Capital  
 16 Management Services ever provided services to  
 17 Highland?  
 18 A. Yeah.  
 19 MS. DEITSCH-PEREZ: Object to the  
 20 form. Asked and answered.  
 21 THE WITNESS: Yeah. I would – not  
 22 in writing. I believe the services owners  
 23 isn't myself and McGraner. I think it was  
 24 myself and Okada.  
 25 And I would say our portfolio and

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1 JAMES DONDERO  
 2 performance of whatever assets are in some  
 3 of those start-up entities ends up being a  
 4 useful track record that then Highland can  
 5 market.  
 6 BY MR. MORRIS:  
 7 Q. Okay. How about NexPoint, did  
 8 NexPoint ever provide services to Highland  
 9 Capital Management, L.P.?  
 10 A. Yes. The real estate – yes. I  
 11 mean, can I just say yes or –  
 12 Q. You could. That would be really  
 13 helpful.  
 14 A. Okay. There we go.  
 15 Q. Can you describe the circumstances  
 16 for me?  
 17 MS. DEITSCH-PEREZ: Finally, some  
 18 accord between the witness and the  
 19 questioner.  
 20 BY MR. MORRIS:  
 21 Q. Can you describe the services for  
 22 me?  
 23 A. NexPoint has a couple of attorneys  
 24 that are real estate experts. We have a lot of  
 25 different attorneys, or we did at Highland.

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1 JAMES DONDERO  
 2 But prior to the bankruptcy, none of the  
 3 Highland attorneys were experienced in real  
 4 estate.  
 5 So anything that required  
 6 transaction help on the Highland platform  
 7 regarding real estate, the NexPoint real estate  
 8 attorneys would help with.  
 9 Q. Okay. Anything else?  
 10 A. I'm sure there are others. That's  
 11 all I can think of off the top of my head. I  
 12 just wanted to give you an example.  
 13 Q. I appreciate that.  
 14 You're aware that Highland has sued  
 15 HCMFA to collect on two notes that were signed  
 16 by Frank Waterhouse in 2019 in the aggregate  
 17 amount of \$7.4 million; is that right?  
 18 A. Yes.  
 19 Q. Okay. And we actually went through  
 20 this the other day, so I don't want to belabor  
 21 it if I don't have.  
 22 But do you recall that we saw the  
 23 incumbency certificate which identified  
 24 Mr. Waterhouse as the treasurer of HCMFA as of  
 25 April 2019?

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1 JAMES DONDERO  
 2 both Notes. Essentially, it's regarding the  
 3 terrace start issue that we had with the  
 4 Fort Worth SEC.  
 5 Q. Did you give anyone instructions  
 6 concerning the transfer of the \$2.4 million?  
 7 A. I instructed them to make the  
 8 transfer, or I was involved in the – involved  
 9 in approving the transfer.  
 10 Q. And who did you instruct to make the  
 11 transfer of \$2.4 million?  
 12 A. Yeah. It would have been Frank.  
 13 Q. Do you have a recollection of  
 14 instructing Frank to transfer \$2.4 million?  
 15 A. Yeah. Generally, yes.  
 16 Q. Do you have a recollection of what  
 17 instructions you gave him?  
 18 A. It was well-known. It was a very  
 19 disruptive – the whole thing was very  
 20 disruptive at Highland and HCMFA. Everybody  
 21 was aware of it. The settlement, the  
 22 negotiations around the settlement, the  
 23 give-and-take, the amounts changed over time.  
 24 Everybody was aware of it in senior  
 25 management, including myself. And putting the

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1 JAMES DONDERO  
 2 A. Yes.  
 3 Q. Okay. And do you recall that you  
 4 signed that incumbency certify in your capacity  
 5 as president of HCMFA?  
 6 MS. DEITSCH-PEREZ: Object to the  
 7 form.  
 8 THE WITNESS: Yes.  
 9 BY MR. MORRIS:  
 10 Q. I want to talk about the first of  
 11 the two Notes, the \$2.4 million Note.  
 12 Do you recall that in early May  
 13 2019, Highland transferred \$2.4 million to  
 14 HCMFA?  
 15 A. I don't remember a lot of specifics,  
 16 but I know there were two Notes as you're  
 17 describing.  
 18 Q. Okay. And there was – and one of  
 19 them – did you authorize the \$2.4-million  
 20 payment?  
 21 A. Yes.  
 22 Q. And why did you authorize Highland  
 23 to transfer \$2.4 million to HCMFA in early May  
 24 2019?  
 25 A. My answer's the same for both –

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1 JAMES DONDERO  
 2 money into HCMFA to settle it was something I  
 3 was aware of and authorized and a critical  
 4 piece of putting that issue to bed.  
 5 Q. Okay. I'm just asking you if you  
 6 recall what instructions you gave to  
 7 Mr. Waterhouse concerning the transfer if you  
 8 recall?  
 9 A. No. I mean, like I said, I  
 10 authorized the movement of the money.  
 11 Q. Okay. Were you aware at that time  
 12 that the transfer of the \$2.4 million from  
 13 Highland to HCMFA was booked as a loan on both  
 14 Highland and HCMFA's books and records?  
 15 A. I was not aware at the time.  
 16 Q. Okay.  
 17 MR. MORRIS: Can we put up  
 18 Exhibit 53 please.  
 19 THE VIDEOGRAPHER: Counsel, I will  
 20 need a media break in about five minutes.  
 21 MR. MORRIS: Thank you very much.  
 22 Why don't we take that right now before I  
 23 begin my examination on this document. How  
 24 long do you need?  
 25 THE VIDEOGRAPHER: It will just be a

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1 JAMES DONDERO  
 2 minute, but this is the end of Media Number  
 3 1.  
 4 MR. MORRIS: Okay.  
 5 THE VIDEOGRAPHER: We are off the  
 6 record at 3:21.  
 7 MR. MORRIS: We are off the record,  
 8 but don't go anywhere.  
 9 MS. DEITSCH-PEREZ: What?  
 10 MR. MORRIS: We're not taking a  
 11 break.  
 12 THE VIDEOGRAPHER: Yep. This will  
 13 just take a minute. Please stand by.  
 14 MR. MORRIS: Thank you.  
 15 THE VIDEOGRAPHER: All right.  
 16 Suzanne, are you good to go?  
 17 THE COURT REPORTER: I'm good.  
 18 THE VIDEOGRAPHER: This is the  
 19 beginning of Media Number 2, Volume II  
 20 [sic] in the deposition of James Dondero.  
 21 We are back on the record at 3:22.  
 22 MR. MORRIS: All right. Can we  
 23 please put up Exhibit 53.  
 24 MS. CANTY: Yeah. Just one second.  
 25 My computer went haywire. Give me one

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1 JAMES DONDERO  
 2 will try to call her, too; but I did text  
 3 her a couple of minutes ago. I will try to  
 4 reach out again. Hold on.  
 5 MS. DEITSCH-PEREZ: I'm back. I'm  
 6 lucky in that the ladies room is directly  
 7 across from the conference room.  
 8 Mr. Dondero's down at the other end  
 9 of the floor, so he will be back shortly.  
 10 And I just saw your note, John. The  
 11 – the videographer said he needed a break;  
 12 and you said, okay, then let's take our  
 13 break now. So we took a restroom break.  
 14 MR. MORRIS: I think everybody on  
 15 the phone – and there's a transcript of it  
 16 – knows that I specifically said, how long  
 17 do you need. He said one minute, and I  
 18 said don't go anywhere.  
 19 This is your time, not mine.  
 20 MS. DEITSCH-PEREZ: Prior to that,  
 21 you said, let's take the break now.  
 22 MR. MORRIS: Yeah, to allow him to  
 23 change the tape. I'm not going to question  
 24 anybody on the call, but I'm 100 percent  
 25 certain that they would all tell you – and

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1 JAMES DONDERO  
 2 minute.  
 3 (Whereupon, Exhibit 53, E-mail  
 4 correspondence, Bates stamped D-CNL003768  
 5 through D-CNL003770, marked for  
 6 identification, as of this date.)  
 7 BY MR. MORRIS:  
 8 Q. Okay. So Mr. Dondero, do you see  
 9 what's on the screen here?  
 10 Mr. Dondero?  
 11 MR. MORRIS: Deborah?  
 12 Apparently Mr. Dondero has left the  
 13 seat.  
 14 THE VIDEOGRAPHER: Would you like to  
 15 go off record?  
 16 MR. MORRIS: No.  
 17 THE VIDEOGRAPHER: Okay. We'll stay  
 18 on the record.  
 19 MR. MORRIS: The video is still  
 20 rolling, right, sir?  
 21 THE VIDEOGRAPHER: Yes, it is.  
 22 MR. MORRIS: Thank you.  
 23 Hi, Michael. If you're – if you're  
 24 able, can you reach out to your partner?  
 25 MR. AIGEN: I had texted her. I

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1 JAMES DONDERO  
 2 the record will reflect, I specifically  
 3 said do not leave.  
 4 MS. DEITSCH-PEREZ: Okay.  
 5 Mr. Dondero is back.  
 6 You have to turn – turn the video  
 7 on.  
 8 THE WITNESS: I'm back.  
 9 BY MR. MORRIS:  
 10 Q. All right. Do you see on the screen  
 11 there's a document that's been marked as  
 12 Exhibit 53?  
 13 A. Yup.  
 14 Q. Do you see there's an e-mail string  
 15 dated May 2, 2019?  
 16 A. Yes.  
 17 Q. And do you see that Mr. Waterhouse  
 18 has – if you look at the second to the top,  
 19 Mr. Waterhouse's e-mail is forwarding a  
 20 spreadsheet to David Klos and Kristin Hendrix  
 21 that he described as, quote, "The support for  
 22 the payment to GAF by HCMFA?  
 23 A. Yes.  
 24 Q. What's GAF?  
 25 A. That's the fund itself that owned

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1 JAMES DONDERO  
 2 the TerreStar investment. The SEC wanted, I  
 3 believe, some payment to go to them; but they  
 4 all, meaning the SEC, and the SEC wanted some  
 5 payment to go to the fund itself for the  
 6 benefit of the investors.  
 7 Q. Okay.  
 8 MR. MORRIS: Can we can to the chart  
 9 that's attached.  
 10 MS. CANTY: (Complies with request.)  
 11 BY MR. MORRIS:  
 12 Q. Have you ever seen this chart  
 13 before, sir?  
 14 A. I don't believe so specifically, but  
 15 I understand what it is.  
 16 Q. And is it your understanding, based  
 17 on this chart, that the loss to the fund was  
 18 \$6,068,851?  
 19 MS. DEITSCH-PEREZ: Object to the  
 20 form.  
 21 THE WITNESS: Yes.  
 22 BY MR. MORRIS:  
 23 Q. And there's -- there's a column  
 24 there that's lost to fund.  
 25 Do you see that?

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1 JAMES DONDERO  
 2 or to the fund or whatever, I -- I have all  
 3 faith and confidence we complied with; but I  
 4 don't -- I don't know the exact numbers. I'm  
 5 not aware of the exact numbers.  
 6 Q. Do you understand that this analysis  
 7 shows how HCMFA was going to finance the  
 8 payment to the fund as a result of the NAV  
 9 error?  
 10 MS. DEITSCH-PEREZ: Object to the  
 11 form.  
 12 THE WITNESS: I'm sorry. Could you  
 13 repeat that question again?  
 14 BY MR. MORRIS:  
 15 Q. Sure. Do you understand that  
 16 this -- that this chart here sets forth the  
 17 manner in which HCMFA is going to fund the  
 18 payment that it was making to GAF on account of  
 19 the NAV error?  
 20 A. I would call it more of a  
 21 calculation on where the amounts are coming  
 22 from. It doesn't appear to me that this is a  
 23 funding statement.  
 24 Q. Okay. I appreciate that.  
 25 So -- so your interpretation of this

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1 JAMES DONDERO  
 2 A. Yes.  
 3 Q. And is it -- is it consistent with  
 4 your recollection that the estimated loss of  
 5 the fund or to the fund was approximately  
 6 \$6 million?  
 7 A. Yes. There is approximately --  
 8 there's some other small numbers moving around,  
 9 but yes.  
 10 Q. Okay. And do you recall that HCMFA  
 11 informed the SEC that HCMFA would make the fund  
 12 whole by paying it an amount of money equal to  
 13 the loss?  
 14 A. Yes.  
 15 Q. And, in fact, HCMFA paid the fund  
 16 approximately \$6 million in connection with the  
 17 losses sustained as a result of the NAV error,  
 18 correct?  
 19 A. I don't know details like that.  
 20 Q. So you're not -- you're not aware of  
 21 the fact that HCMFA paid to the fund  
 22 approximately \$6 million in May of 2019?  
 23 A. Approximately six or approximately  
 24 seven. I -- I don't know. Whatever the  
 25 agreement was with the SEC to be paid to them

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1 JAMES DONDERO  
 2 is that this shows the sources of money that  
 3 were going to be used to make the payment; is  
 4 that fair?  
 5 MS. DEITSCH-PEREZ: Objection to the  
 6 form.  
 7 THE WITNESS: Yeah. I think it's a  
 8 reconciliation between the insurance, some  
 9 forgiveness of fees, and then additional  
 10 monies that are necessary.  
 11 BY MR. MORRIS:  
 12 Q. Okay. And --  
 13 A. Yeah. Go ahead.  
 14 Q. Did HCMFA file an insurance claim in  
 15 connection with the NAV error?  
 16 A. I believe they did get -- I believe  
 17 they did, and I believe they did get paid some  
 18 insurance.  
 19 Q. And -- and if we look at the totals  
 20 column in the right, did HCMFA receive, to the  
 21 best of your recollection, approximately  
 22 \$5 million from insurance?  
 23 A. Yes. I think we should work -- I  
 24 think we should work from that column --  
 25 Q. Okay. So let's --

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1 JAMES DONDERO

2 A. -- versus the other column, yeah.

3 Q. I apologize, Mr. Dondero.

4 So if we look at the last column,

5 the total, does that comport with your

6 recollection that HCMFA paid GAF approximately

7 \$7.44 million in May of 2019 on account of the

8 NAV error?

9 A. I think it's more than that, and I

10 think it's also the 375 below that.

11 Q. Okay.

12 A. And then I -- yeah, definitely those

13 two numbers in aggregate. I don't know if it's

14 any others.

15 Q. Okay. And did, to the best of your

16 recollection, HCMFA make an insurance claim on

17 which it received almost \$5 million as a source

18 of funding for the payment that was due to GAF?

19 A. Yes.

20 Q. Are you familiar with that insurance

21 claim?

22 A. No.

23 Q. Do you know if the insurance claim

24 made any mention of Highland?

25 A. I have no idea. I have no idea.

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1 JAMES DONDERO

2 \$2.4 million the amount of money that HCMFA

3 needed in order to fully fund the payment to

4 GAF?

5 A. And I don't want to mince small

6 numbers; but to the extent that they gave up

7 their management fees also, like that 1939 or

8 the 39 above that -- and I don't know what that

9 47 is above that -- those are management fees

10 that would have paid salaries and expenses at

11 HCMFA also.

12 So to the extent they gave up those

13 items as part of the settlement, then HCMFA

14 would have needed more money than even the 2.4

15 that came from Highland.

16 Q. Do you know if HCMFA ever informed

17 the SEC that Highland was responsible for the

18 NAV error?

19 A. I -- I don't know. We wouldn't have

20 hidden it if they would have asked. My

21 experience with the SEC is they identify the

22 advisor, and who the advisor picks for vendors

23 the advisor's responsible for.

24 MR. MORRIS: I move to strike

25 everything after "I don't know."

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1 JAMES DONDERO

2 Q. Okay. So as a -- as a matter of

3 rough math, would you agree with me that the

4 insurance procedures funded approximately

5 5 million of the \$7.8 million that was the

6 total loss?

7 MS. DEITSCH-PEREZ: Object to the

8 form.

9 THE WITNESS: This was the amount

10 due to the investors. I -- I -- my rough

11 recollection is there was another amount

12 that was due the SEC, but I don't remember

13 specifically.

14 BY MR. MORRIS:

15 Q. Okay. And do you see in the middle

16 of the page, there's a total additional payment

17 from advisor of approximately \$2.4 million?

18 A. Yes.

19 Q. And is it your understanding that

20 that is the amount that HCMFA had to come out

21 of pocket in order to fully fund the GAF

22 payment?

23 A. Yes, but it's clear to me also that

24 there's a forgiveness of management fees, also.

25 Q. Okay. But is two point -- but is

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1 JAMES DONDERO

2 BY MR. MORRIS:

3 Q. Did you ever direct anyone to inform

4 the SEC that Highland was responsible for the

5 NAV error?

6 A. No, not that I recall.

7 Q. Do you know if anybody acting on

8 behalf of HCMFA ever informed the SEC that

9 Highland was responsible for the NAV error?

10 A. I don't know.

11 Q. Do you know if HCMFA ever informed

12 GAF that Highland was responsible for the NAV

13 error?

14 A. Yes.

15 Q. And is that reflected in writing

16 anywhere?

17 A. Yes. Numerous places.

18 Q. And what writing would that be

19 reflected in?

20 A. The board minutes. There were

21 conversations every board meeting for over a

22 year. The retail board represents GAF. They

23 were well aware of the subadvisory agreements,

24 and they were well aware that all the staff

25 regarding valuation were housed at Highland;

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1 JAMES DONDERO  
 2 all the valuation activities were performed by  
 3 Highland. And GAF and HCMFA relied on  
 4 Highland, and it was a material part of board  
 5 conversations for over a year.  
 6 MR. MORRIS: Okay. I move to  
 7 strike.  
 8 BY MR. MORRIS:  
 9 Q. I'm asking you just about writings,  
 10 sir.  
 11 Can you identify –  
 12 A. No, no, no. I'm not – I'm not  
 13 going to – I'm not going to allow that strike,  
 14 or I'm not answering anymore questions.  
 15 Q. Well, the judge will be the  
 16 determiner of that. So I'd like you to answer  
 17 my question.  
 18 Is there any – I don't want to know  
 19 about board meetings.  
 20 Is there anything in writing that  
 21 HCMFA provided to GAF that specifically stated  
 22 that Highland and not HCMFA was responsible for  
 23 the NAV error?  
 24 MS. DEITSCH-PEREZ: Asked and  
 25 answered.

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1 JAMES DONDERO  
 2 informed the Corporate Accounting Group that  
 3 this transaction was a, quote, "New inter  
 4 co-loan?  
 5 A. Yes.  
 6 Q. Do you see that he asked  
 7 Christian – Kristin or Hayley to prepare a  
 8 Promissory Note for discussion?  
 9 A. Yes.  
 10 Q. Okay. Are you aware in May 2019,  
 11 Frank Waterhouse was included in the e-mail  
 12 string identified as Corporate Accounting?  
 13 A. I do not have that awareness.  
 14 Q. Okay. Do you see at the top  
 15 Ms. Hendrix – Ms. Hendrix's response to  
 16 Mr. Klos's e-mail and attaches a copy of a  
 17 Promissory Note?  
 18 A. Yes.  
 19 Q. Okay.  
 20 MR. MORRIS: Can we just go to the  
 21 attachment, please.  
 22 MS. CANTY: (Complies with request.)  
 23 BY MR. MORRIS:  
 24 Q. Do you see that that is a Promissory  
 25 Note dated May 2, 2019, in the amount of

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1 JAMES DONDERO  
 2 THE WITNESS: Yes. Numerous board  
 3 minutes.  
 4 BY MR. MORRIS:  
 5 Q. Okay. And have those board minutes  
 6 been produced in this litigation?  
 7 A. I don't know.  
 8 Q. Okay.  
 9 MR. MORRIS: Let's go to the next  
 10 exhibit, 54.  
 11 MS. CANTY: (Complies with request.)  
 12 (Whereupon, Exhibit 54, E-mail  
 13 correspondence, Bates stamped D-CNL003777  
 14 through D-CNL003779, marked for  
 15 identification, as of this date.)  
 16 BY MR. MORRIS:  
 17 Q. Do you see that on the same day, at  
 18 the bottom, Mr. Klos sent an e-mail to the  
 19 Corporate Accounting Group?  
 20 A. Yes.  
 21 Q. And do you see that he instructed  
 22 the Corporate Accounting Group to transfer  
 23 \$2.4 million from HCMLT to HCMFA?  
 24 A. Yes.  
 25 Q. And do you see that he specifically

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1 JAMES DONDERO  
 2 \$2.4 million that where the maker is Highland  
 3 Capital Management Fund Advisors, L.P.?  
 4 A. Yeah.  
 5 Q. Have you ever seen this before?  
 6 A. I think in our last deposition.  
 7 Q. Okay. Do you recall when you saw it  
 8 for the first time?  
 9 A. Our last deposition.  
 10 Q. Do you recall when you learned about  
 11 the existence of this document for the first  
 12 time?  
 13 A. I believe somehow regarding the  
 14 litigation.  
 15 Q. Okay. So you have no knowledge of  
 16 this Promissory Note until after the litigation  
 17 was commenced; do I have that right?  
 18 A. Correct.  
 19 Q. So you're not aware of Highland  
 20 having made a demand for payment on this  
 21 Promissory Note in December of 2020?  
 22 A. Not that I recall.  
 23 Q. Okay. Putting aside the question of  
 24 the Promissory Note, do you recall when you  
 25 first learned that the \$2.4 million that you

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1 JAMES DONDERO  
 2 instructed to be paid to HCMFA by Highland in  
 3 May of 2019, do you recall when you first  
 4 learned that that was booked as a loan?  
 5 A. I believe just generally as part of  
 6 this litigation, not before then.  
 7 Q. Are you aware that the Corporate  
 8 Accounting Group created a daily list of wire  
 9 transfers that were being made on behalf of  
 10 Highland and its affiliates?  
 11 A. Not – no, not specifically.  
 12 Q. Okay. So since you did not know  
 13 that the \$2.4 million transfer had been booked  
 14 as a loan, is it fair to say that you never  
 15 told anybody prior to the commencement of this  
 16 litigation that the transaction should not have  
 17 been booked as a loan?  
 18 A. I had no conversations either way  
 19 prior to this litigation regarding the booking  
 20 of the 2.4 million.  
 21 Q. Did you ever take any steps to try  
 22 to determine how Highland and HCMFA accounted  
 23 for the \$2.4 million that you instructed to be  
 24 transferred from Highland to HCMFA in early  
 25 May 2019?

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1 JAMES DONDERO  
 2 A. Yes, generally.  
 3 Q. Okay. Why did you authorize  
 4 Highland to transfer \$5 million to HCMFA in  
 5 early 2019?  
 6 A. It was part of the overall  
 7 resolution of the TerreStar situation.  
 8 Q. Do you recall that HCMFA paid  
 9 something called a consent fee equal to  
 10 \$5 million in early May 2019?  
 11 A. Well, like I said, I don't recall  
 12 the exact amounts or the exact amounts net of  
 13 insurance; but my recollection it was to  
 14 resolve that.  
 15 Q. Do you know – do you know – did –  
 16 let's real simple.  
 17 Did – did HCMFA pay a consent fee  
 18 in May of 2019?  
 19 A. I – I don't recall.  
 20 Q. Do you know what a consent fee is?  
 21 A. Yes.  
 22 Q. What's a consent fee?  
 23 A. It's a – a fee to encourage  
 24 shareholder vote on something or shareholder  
 25 restitution on something, typically.

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1 JAMES DONDERO  
 2 A. No.  
 3 Q. Did you rely on Mr. Waterhouse to  
 4 oversee that?  
 5 A. Yes.  
 6 Q. Okay. And you did so because he  
 7 held not only the CFO title at Highland, but he  
 8 also held the treasurer title at HCMFA,  
 9 correct?  
 10 MS. DEITSCH-PEREZ: Object to the  
 11 form.  
 12 THE WITNESS: I relied on him  
 13 because generally the accounting function  
 14 across the organization reported up through  
 15 him.  
 16 BY MR. MORRIS:  
 17 Q. Let's talk about the \$5 million  
 18 Note.  
 19 Do you recall that in early  
 20 May 2019, in fact, the next day, May 3rd,  
 21 Highland transferred \$5 million to HCMFA?  
 22 A. I – I don't recall specifically.  
 23 Q. Do you recall authorizing the  
 24 transfer of \$5 million from Highland to HCMFA  
 25 in early May 2019?

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1 JAMES DONDERO  
 2 Q. And did – do you recall if HCMFA  
 3 ever paid a consent fee in the year 2019?  
 4 A. I don't recall.  
 5 Q. Would Highland be responsible at all  
 6 if HCMFA paid a consent fee?  
 7 MS. DEITSCH-PEREZ: Object to the  
 8 form.  
 9 THE WITNESS: It could be. I  
 10 don't – I don't know or remember the  
 11 circumstances.  
 12 BY MR. MORRIS:  
 13 Q. Is the payment of a consent fee a  
 14 voluntary decision by – by HCMFA? Is that  
 15 something that –  
 16 MS. DEITSCH-PEREZ: Object to the  
 17 form.  
 18 MR. MORRIS: Is that – withdrawn.  
 19 That's fair.  
 20 BY MR. MORRIS:  
 21 Q. Is the payment of a consent fee  
 22 required, or is that something that one can  
 23 exercise discretion in whether or not to make?  
 24 MS. DEITSCH-PEREZ: Object to the  
 25 form.

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1 JAMES DONDERO  
 2 THE WITNESS: My answer would be it  
 3 depends.  
 4 BY MR. MORRIS:  
 5 Q. Do you recall whether Highland –  
 6 withdrawn.  
 7 Do you recall whether HCMFA was  
 8 required to make – to make a – to pay a  
 9 consent fee at any time in 2019?  
 10 A. I don't recall.  
 11 Q. Do you recall ever believing that  
 12 HCMFA paid a consent fee because of something  
 13 that – because of a mistake that Highland  
 14 made?  
 15 A. It could be. I don't know.  
 16 Q. I'm just asking if you had a  
 17 recollection?  
 18 A. I don't have a recollection.  
 19 Q. Okay.  
 20 MR. MORRIS: To the videographer, I  
 21 think Mr. Dondero's screen has frozen.  
 22 MS. DEITSCH-PEREZ: John, your  
 23 screen is frozen, too.  
 24 MR. MORRIS: I'm –  
 25 MS. DEITSCH-PEREZ: I'm also – hang

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1 JAMES DONDERO  
 2 Can somebody help Mr. Dondero and  
 3 get his audio feed fixed?  
 4 Thank you, sir.  
 5 MS. DEITSCH-PEREZ: Does this make a  
 6 difference?  
 7 MR. MORRIS: It sure does.  
 8 THE WITNESS: Hello, hello.  
 9 THE MORRIS: Thank you. All right.  
 10 Let's try and – let's try and finish this  
 11 up.  
 12 BY MR. MORRIS:  
 13 Q. Are you ready, sir?  
 14 A. Yes.  
 15 Q. Were you aware in May 2019 that the  
 16 \$5-million transfer from Highland to HCMFA was  
 17 booked as a loan?  
 18 A. No.  
 19 MR. MORRIS: Can we put up  
 20 Exhibit 56, please.  
 21 MS. CANTY: (Complies with request.)  
 22 (Whereupon, Exhibit 56, E-mail  
 23 correspondence, Bates stamped D-CNL003763,  
 24 marked for identification, as of this  
 25 date.)

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1 JAMES DONDERO  
 2 on. I've lost contact. Give me a minute.  
 3 THE VIDEOGRAPHER: Okay. I'd like  
 4 us to go off record. Do you agree?  
 5 MR. MORRIS: Yeah, but please don't  
 6 leave.  
 7 MS. DEITSCH-PEREZ: Yes, we agree.  
 8 THE VIDEOGRAPHER: All right. Off  
 9 the record at 3:53.  
 10 (Discussion held off the record.)  
 11 THE VIDEOGRAPHER: We are back on  
 12 the record at 3:54.  
 13 BY MR. MORRIS:  
 14 Q. Okay. Can we put up – no. Before  
 15 we do that, Mr. Dondero, can you hear me?  
 16 We can't hear you. Are you on mute?  
 17 Are you on mute? Can you speak?  
 18 You're yelling at me now. Stop  
 19 yelling at me.  
 20 THE VIDEOGRAPHER: I'm seeing is  
 21 that Mr. Dondero is on mute.  
 22 (Interruption.)  
 23 THE VIDEOGRAPHER: We've got – do  
 24 you want to go off video record?  
 25 MR. MORRIS: No.

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1 JAMES DONDERO  
 2 BY MR. MORRIS:  
 3 Q. All right. Do you see that this is  
 4 an e-mail from Ms. Hendrix to the Corporate  
 5 Accounting Group on May 3, 2019?  
 6 Do you see that, sir?  
 7 A. Yes.  
 8 Q. And do you see that Ms. Hendrix told  
 9 corporate accounting to transfer \$5 million as  
 10 a, quote, "new loan," close quote?  
 11 A. Yes.  
 12 Q. And did you see Ms. Hendrix also  
 13 said that she would, quote, "paper the loan,"  
 14 close quote?  
 15 A. Yes.  
 16 Q. Okay. You're aware that from time  
 17 to time, members of the Corporate Accounting  
 18 Group used a template for a Promissory Note  
 19 that had been previously prepared by counsel,  
 20 correct?  
 21 MS. DEITSCH-PEREZ: Object to the  
 22 form.  
 23 THE WITNESS: I – yeah. I'm aware  
 24 they have a loan template, yes.  
 25



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1 JAMES DONDERO  
 2 BY MR. MORRIS:  
 3 Q. Okay. Do you see there's a  
 4 parenthetical in the first sentence that says,  
 5 "(4.4M should be coming in from Jim soon)"?  
 6 A. Yes.  
 7 Q. Do you know what that refers to?  
 8 A. My – my educated – boy. My  
 9 educted speculation is that Highland didn't  
 10 have enough cash, so I probably put four into  
 11 Highland for Highland to send to HCMFA. That's  
 12 my educated guess; but otherwise, I don't know  
 13 specifically.  
 14 Q. And do you recall that you had taken  
 15 out a loan from Highland earlier in the year,  
 16 and this payment was credited against the  
 17 principal and interest then due on that Note?  
 18 A. I don't have specific awareness.  
 19 That would make sense.  
 20 Q. Okay.  
 21 A. Versus – versus creating a new loan  
 22 or something.  
 23 Q. Okay.  
 24 MR. MORRIS: Let's go to Exhibit 57,  
 25 please.

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1 JAMES DONDERO  
 2 Q. And did you see this for the first  
 3 time when I showed it to you late last week?  
 4 A. Yes.  
 5 Q. And did you learn about the loan  
 6 from Highland to HCMFA for the first time after  
 7 the litigation was commenced?  
 8 A. That's the first time I remember.  
 9 Q. And did you learn that Highland and  
 10 HCMFA had booked the \$5-million transfer in May  
 11 of 2019 as a loan for the first time after the  
 12 litigation was commenced?  
 13 A. That is my recollection.  
 14 Q. Okay. We talked at your first  
 15 deposition in May about Highland's audited  
 16 financial statements.  
 17 I don't know if you have a  
 18 recollection of that. Do you?  
 19 A. Just generally, yes.  
 20 Q. Okay. I just want to focus on these  
 21 two notes.  
 22 For this portion of the deposition,  
 23 we are questioning you in your individual  
 24 capacity, and you're only focused on these two  
 25 notes from HCMFA to Highland, okay?

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1 JAMES DONDERO  
 2 MS. CANTY: (Complies with request.)  
 3 (Whereupon, Exhibit 57, Promissory  
 4 Note, Bates stamped D-CNL003764 through  
 5 D-CNL003765, marked for identification, as  
 6 of this date.)  
 7 BY MR. MORRIS:  
 8 Q. In fact, were you aware, sir, that  
 9 in May 2019, you paid Highland exactly  
 10 \$7.5 million?  
 11 A. Not specifically, but it makes sense  
 12 given the context we're discussing.  
 13 Q. Okay. So the context that we're  
 14 discussing was HCMFA needed \$7.5 million.  
 15 Highland didn't have it. So that seven – you  
 16 paid \$7.5 million to Highland, which was  
 17 applied against your outstanding note. And  
 18 then Highland transferred that money to HCMFA.  
 19 Does that sound right to you?  
 20 A. Generally, yes.  
 21 Q. Okay. So now if we look at this  
 22 note that's on the screen, do you see this is a  
 23 Promissory Note for \$5 million dated May 3,  
 24 2019?  
 25 A. Yes.

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1 JAMES DONDERO  
 2 A. Okay.  
 3 Q. Okay. When did you first learn that  
 4 these notes were carried as assets on  
 5 Highland's balance sheet?  
 6 A. Like I said, I – my recollection is  
 7 that as part of the bankruptcy and part of the  
 8 litigation.  
 9 Q. And so did you learn of it as part  
 10 of the bankruptcy before the litigation was  
 11 commenced, or did you learn that these notes  
 12 were carried as assets after – only after the  
 13 litigation was commenced?  
 14 A. I believe only after. Especially,  
 15 the specificity with regard to the notes, only  
 16 after the litigation was commenced.  
 17 Q. Okay. When did you learn for the  
 18 first time that these notes were carried as  
 19 liabilities on HCMFA's balance sheet?  
 20 Withdrawn. No foundation.  
 21 Are you aware that these notes have  
 22 been carried as liabilities on HCMFA's balance  
 23 sheet?  
 24 A. I wasn't – I wasn't – I wasn't  
 25 aware prior to the litigation.

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1 JAMES DONDERO

2 Q. Okay. Did you learn after the

3 litigation that these notes had been carried as

4 liabilities on HCMFA's balance sheets?

5 A. Yes.

6 Q. Okay. Did you ever review

7 Highland's audited financial statements?

8 A. Not with any specificity.

9 Q. Are you aware that Highland gave

10 these Promissory Notes to PWC as part of the

11 audit process?

12 A. I would assume they did, but I don't

13 have specific awareness.

14 Q. Okay. And why do you assume that

15 they did?

16 A. As part of complete financials to

17 the extent that they were made by Kristin or

18 whoever, properly or improperly. Once they

19 existed, they would have been part of a

20 complete audit.

21 Q. Are you aware that these two

22 Promissory Notes were disclosed in Highland's

23 audited financial statements for the period

24 ending December 31, 2018, as subsequent events?

25 A. No.

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1 JAMES DONDERO

2 Q. Okay.

3 MR. MORRIS: Can we go to page 252

4 of the document? It's got to be -- let's

5 see the Bates.

6 MS. CANTY: (Complies with request.)

7 MR. MORRIS: Yeah. Right there.

8 Okay. Scroll just to the page before so we

9 can see the heading.

10 MS. CANTY: (Complies with request.)

11 BY MR. MORRIS:

12 Q. Okay. Do you see that this is the

13 section of the audited financials entitled

14 "Subsequent Events"?

15 A. Yes.

16 Q. And is it your understanding that

17 the auditors include in subsequent events

18 material transactions THAT occur between the

19 end of the fiscal period in which had audit has

20 been conducted and the date that the auditors

21 sign off?

22 A. Yes.

23 Q. Okay. So if you look at page 39,

24 the next to the last paragraph, do you see, it

25 says, quote, "Over the course of 2019 through

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1 JAMES DONDERO

2 Q. Okay.

3 MR. MORRIS: Can we put up

4 Exhibit 34, please.

5 MS. CANTY: (Complies with request.)

6 (Whereupon, Exhibit 34, Highland

7 Capital Management, L.P., Consolidated

8 Financial Statements and Supplemental

9 Information, dated December 31, 2018, Bates

10 stamped D-CNL000212 through D-CNL000257,

11 marked for identification, as of this

12 date.)

13 BY MR. MORRIS:

14 Q. And turn to -- just if you can see,

15 sir, the first page of this is the December 31,

16 2018, financials.

17 MR. MORRIS: And if we could go to

18 the second or third page to see

19 PricewaterhouseCoopers' signature.

20 MS. CANTY: (Complies with request.)

21 BY MR. MORRIS:

22 Q. And do you see that

23 PricewaterhouseCoopers signed off on the audit

24 on June 3, 2019?

25 A. Yes.

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1 JAMES DONDERO

2 the report date, HCMFA issued Promissory Notes

3 to the partnership in the aggregate amount of

4 \$7.4 million?

5 A. Yes.

6 Q. Okay. And are you surprised to see

7 that in the audit report?

8 MS. DEITSCH-PEREZ: Object to the

9 form.

10 MR. MORRIS: Withdrawn.

11 BY MR. MORRIS:

12 Q. Have you seen -- have you seen this

13 entry in the audit report before this moment?

14 A. No.

15 Q. Okay. Are you aware that Highland

16 employees were responsible for drafting the

17 audit report?

18 A. Responsible for drafting the audit

19 report? I don't know if that's a fair

20 statement.

21 I think they provide the detail; but

22 my understanding, the audit report is a work

23 product of the accounting firm. That's my

24 understanding.

25 Q. Was there a group within Highland

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1 JAMES DONDERO  
 2 that was responsible for working with the  
 3 auditors in the preparation of the audit  
 4 reports?  
 5 A. Yeah, yes.  
 6 Q. Do you know what group that was?  
 7 A. I believe there's a financial  
 8 reporting group that reports to Frank that  
 9 handles this interaction.  
 10 Q. Are you familiar – are you aware of  
 11 what role Mr. Waterhouse plays, if any, in  
 12 connection with Highland's annual audit, at  
 13 least during the time that you were serving as  
 14 president?  
 15 A. I think he – he coordinates – I  
 16 think he has to sign off on many aspects of it,  
 17 you know, as a C suite executive. So he's  
 18 responsible for, you know, completeness,  
 19 integrity, et cetera.  
 20 And there's a certain amount of  
 21 reliance that PWC puts on it; but my  
 22 understanding is audits for the last bunch of  
 23 years has been pretty much a hundred percent  
 24 sampling and verification.  
 25 Q. High- –

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1 JAMES DONDERO  
 2 get some background here.  
 3 THE WITNESS: Yes, I have a general  
 4 understanding. They vary from accounting  
 5 firm to accounting firm, and they vary  
 6 depending upon the type of audit. But I  
 7 have a general understanding of them, yes.  
 8 BY MR. MORRIS:  
 9 Q. Okay. And you're – are you aware  
 10 that HCMFA had its financial statements audited  
 11 by PWC as well?  
 12 A. Yes.  
 13 Q. Are you aware that HCMFA disclosed  
 14 the May 2019 Notes in its own audited financial  
 15 statements?  
 16 A. I assume so.  
 17 Q. Have you ever –  
 18 A. I don't have specific – I don't  
 19 have specific awareness, but it's not reported  
 20 here but not on HCMFA; so I assume they are,  
 21 yes.  
 22 Q. Okay. And do you sign Management  
 23 Representation Letters for HCMFA's audit as you  
 24 do for Highland?  
 25 A. I believe so.

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1 JAMES DONDERO  
 2 A. – PWC.  
 3 Q. I apologize, sir.  
 4 Highland was the sole source of  
 5 information that's contained in its audit  
 6 reports, right, to the best of your knowledge?  
 7 A. No. No. When I – the last thing I  
 8 said a minute ago about I believe it was a  
 9 hundred percent sampling and verification, I  
 10 think the audit firm ties back to vendors,  
 11 credit agreements, source documents, et cetera.  
 12 Highland is not the only source of  
 13 this information.  
 14 Q. You were also responsible for the  
 15 audit report; is that fair?  
 16 A. Yes.  
 17 Q. And that's because you signed a  
 18 management representation letter, correct?  
 19 A. Yes.  
 20 Q. And do you have an understanding of  
 21 what management a representation letter is?  
 22 MS. DEITSCH-PEREZ: Object to the  
 23 form. I think you've asked this in each  
 24 day of the deposition.  
 25 MR. MORRIS: Okay. Just trying to

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1 JAMES DONDERO  
 2 Q. Have you ever told anyone that  
 3 HCMFA's audited financial statements for the  
 4 period ending December 31, 2018, inaccurately  
 5 described the \$7.4 million transferred from  
 6 Highland to HCMFA as loans?  
 7 MS. DEITSCH-PEREZ: Object to the  
 8 form.  
 9 THE WITNESS: No, I have not; but I  
 10 haven't been involved in any of the audit  
 11 functions for quite some time.  
 12 I don't think I was involved or  
 13 signed Management Representation Letters  
 14 for any period covered by this.  
 15 BY MR. MORRIS:  
 16 Q. Okay. Let's switch gears.  
 17 The advisors have annual contracts  
 18 to manage certain retail funds, correct?  
 19 A. Yes.  
 20 Q. And the retail funds have a board  
 21 that decides whether to renew the contracts  
 22 with the advisors, correct?  
 23 A. Yes.  
 24 Q. And in connection with the annual  
 25 renewal, the advisors provide information to

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1 JAMES DONDERO  
 2 the retail board, correct?  
 3 A. Yes.  
 4 Q. And you've participated in meetings  
 5 with the retail board concerning the renewal  
 6 process, correct?  
 7 A. Sometimes.  
 8 Q. Okay. Do you recall that in late  
 9 2020, the advisors provided a written memo to  
 10 the retail board in connection with the annual  
 11 15-C review process?  
 12 A. No.  
 13 Q. Okay.  
 14 MR. MORRIS: Can we put up  
 15 Exhibit 59, please.  
 16 MS. CANTY: (Complies with request.)  
 17 (Whereupon, Exhibit 59, Memorandum,  
 18 dated October 23, 2020, Bates stamped  
 19 HCMFAS 000025 through HCMFAS 000031, marked  
 20 for identification, as of this date.)  
 21 BY MR. MORRIS:  
 22 Q. Do you see that this is a memo dated  
 23 October 23, 2020?  
 24 A. Yes.  
 25 Q. Is it fair to describe this memo as

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1 JAMES DONDERO  
 2 THE WITNESS: Just stop there for a  
 3 second.  
 4 MS. CANTY: (Complies with request.)  
 5 THE WITNESS: Okay. Keep going.  
 6 MS. CANTY: (Complies with request.)  
 7 BY MR. MORRIS:  
 8 Q. Just – I'm going to ask you  
 9 questions about Section 2 just so you know, but  
 10 you're welcome to view any portion of this  
 11 document as you believe necessary.  
 12 MS. CANTY: I also put it in the  
 13 chat, John.  
 14 MR. MORRIS: Thank you.  
 15 THE WITNESS: I see it.  
 16 BY MR. MORRIS:  
 17 Q. Okay. So –  
 18 A. Can you go – let's keep going.  
 19 Just I'll quickly read the whole thing.  
 20 Q. No problem.  
 21 A. That's it. Okay. Got it. All  
 22 right.  
 23 Q. Okay. So now that you've seen the  
 24 substance of the memo, do you recall if you saw  
 25 it before today?

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1 JAMES DONDERO  
 2 a memo from the advisors to the retail boards  
 3 concerning a supplemental 15-C information  
 4 request?  
 5 A. Yes.  
 6 Q. Okay. As always, Mr. Dondero, you  
 7 can view any portion of this document. But if  
 8 we could just scroll down a little bit, I just  
 9 want to know –  
 10 MS. DEITSCH-PEREZ: Do we have a  
 11 copy of this document? Is it in your book?  
 12 MR. MORRIS: No.  
 13 MS. DEITSCH-PEREZ: Okay. Well,  
 14 then he can't actually look at it. He's  
 15 looking at what's on the screen.  
 16 MR. MORRIS: Please.  
 17 BY MR. MORRIS:  
 18 Q. Mr. Dondero, do you understand what  
 19 I meant?  
 20 Will you let me know if there's any  
 21 portion of the document you want to see?  
 22 A. Sure. Can you – can you just keep  
 23 scrolling and let me see the next page?  
 24 Q. Thank you, sir.  
 25 MS. CANTY: (Complies with request.)

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1 JAMES DONDERO  
 2 A. I've never seen it before today.  
 3 Q. Okay. So do you know who's  
 4 responsible for preparing a memo of this type  
 5 on behalf of the advisors?  
 6 A. Let's go back to the front and see  
 7 who it's from.  
 8 Q. Sure.  
 9 MS. CANTY: (Complies with request.)  
 10 BY MR. MORRIS:  
 11 Q. Is that –  
 12 A. Yeah. Now, I – given what it is,  
 13 it's something that, I'm sure, comes out of  
 14 legal and compliance.  
 15 Q. And does – do the advisors have –  
 16 withdrawn.  
 17 Did the advisors have their own  
 18 legal and compliance officers as of October 23,  
 19 2020?  
 20 A. No.  
 21 Q. Did they have any – did anybody  
 22 serve as the advisors' general counsel as of  
 23 October 23, 2020?  
 24 A. My belief and recollection is the  
 25 Shared Services Agreements provided the legal

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1 JAMES DONDERO  
 2 and accounting support for all the funds listed  
 3 in the "to" section here.  
 4 As I said earlier, NexPoint has a  
 5 couple accountants – I mean – I'm sorry – a  
 6 couple lawyers who do real estate transactions  
 7 stuff. Their – their title – their title  
 8 meaning DC's counsel, DC Sauter, who's the most  
 9 senior attorney there, it might be general  
 10 counsel; but he only does real estate  
 11 transactions.  
 12 The legal dependents of NexPoint and  
 13 HCMFA was on the Shared Services Agreement and  
 14 the Highland attorneys that performed those  
 15 Shared Services Agreements.  
 16 Q. Okay. Did anybody acting on behalf  
 17 of the advisors review and approve this memo  
 18 before it was sent to the retail funds?  
 19 A. I don't know.  
 20 Q. Is it your practice as the president  
 21 of the advisors to have memos sent to the  
 22 retail board without anybody reviewing and  
 23 approving the memos on behalf of the advisors?  
 24 MS. DEITSCH-PEREZ: Object to the  
 25 form.

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1 JAMES DONDERO  
 2 Q. Okay. In the 53 or 54 weeks since  
 3 this memo as was sent, do you know if it has  
 4 been amended or modified in any way?  
 5 A. I believe there was similar memos  
 6 like this for this year's annual – for the  
 7 2021 renewal, but I do not have – I've not  
 8 seen those either; and I don't know how this  
 9 answer would have changed.  
 10 Q. Okay. But at least as of  
 11 October 23, 2020, this is the response that the  
 12 advisors gave to the retail board in response  
 13 to Question Number 2, right?  
 14 MS. DEITSCH-PEREZ: Object to the  
 15 form.  
 16 THE WITNESS: As far – as far as I  
 17 know, having seen it here for the first  
 18 time and not knowing whether this was the  
 19 final or if there were subsequent letters  
 20 and not knowing what the 2021 letter looks  
 21 like, on its surface that appears so; but I  
 22 have no awareness.  
 23 BY MR. MORRIS:  
 24 Q. Okay. And just I'll represent to  
 25 you, Mr. Dondero, that I obtained this letter

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1 JAMES DONDERO  
 2 THE WITNESS: I'm not aware of what  
 3 standard practice was or wasn't; but again,  
 4 the infrastructure for something like this  
 5 would have been only at Highland.  
 6 HCMFA only had portfolio managers  
 7 and analysts as employees, and NexPoint  
 8 pretty much only had portfolio managers and  
 9 analysts as employees.  
 10 The staff functions were at  
 11 Highland, and Highland serviced the funds  
 12 via a Shared Services Agreement that was  
 13 still in place as of the date of this memo.  
 14 MR. MORRIS: Okay. Can we go down  
 15 to Section 2, please.  
 16 MS. CANTY: (Complies with request.)  
 17 BY MR. MORRIS:  
 18 Q. Looking at Section 2, do you see  
 19 that there's a question as to whether there are  
 20 any material amounts currently payable or due  
 21 in the future EG notes to –  
 22 A. Yes.  
 23 Q. – the Highland by HCMFA or  
 24 NexPoint?  
 25 A. Yes.

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1 JAMES DONDERO  
 2 from counsel to the advisors in response to my  
 3 specific request for the October 2020, 15-C  
 4 response. So that's how – that's how I got it  
 5 just so you know.  
 6 A. Okay.  
 7 Q. So – so were you aware in October  
 8 of 2020 that NexPoint informed the retail board  
 9 that as of June 30, 2020, it owed Highland and  
 10 its affiliates approximately \$23.7 million?  
 11 MS. DEITSCH-PEREZ: Object to the  
 12 form.  
 13 THE WITNESS: I was not aware.  
 14 BY MR. MORRIS:  
 15 Q. Does that amount comport with your  
 16 recollection as to what was outstanding on the  
 17 May 31, 2017, note that NexPoint gave to  
 18 Highland?  
 19 A. I don't have awareness.  
 20 Q. Okay. Did NexPoint – do you know  
 21 if NexPoint ever informed the retail board that  
 22 any – any portion of that \$23.7 million was  
 23 subject to any of the agreements that you  
 24 entered into with the Dugaboy trustee?  
 25 A. I – I don't know.

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1 JAMES DONDERO

2 Q. Did you ever instruct anybody on

3 behalf of NexPoint to advise the retail board

4 of the existence of the agreements?

5 A. No, I do not believe so.

6 Q. Do you know if anybody acting on

7 behalf of NexPoint has ever informed the retail

8 board that NexPoint's outstanding obligation

9 was subject to the agreements that you entered

10 into with the Dugaboy trustee?

11 A. No.

12 Q. Did you ever inform the retail

13 boards that any portion of this \$23 million was

14 subject to offset?

15 A. You know what, I – let me answer

16 that and let me also adjust the last five no

17 answers I just rattled off.

18 I'm thinking in the context of the

19 time period of the date of this letter, which

20 is October of 2020.

21 Again, there would have been similar

22 letters and disclosures like this and

23 additional questions, initial requests for

24 renewal, and then subsequent questions,

25 probably multiple subsequent questions, given

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1 JAMES DONDERO

2 A. Right. I just want to be clear that

3 my answer's saying I did not specifically

4 instruct somebody to tell them. It doesn't

5 mean they don't know or someone else didn't

6 tell them.

7 Q. Okay.

8 A. So that's – that's a clarification

9 I want to make.

10 Q. Okay. No problem.

11 And then – and then do you see that

12 there's a report to the retail board that HCMFA

13 had approximately \$12.3 million outstanding to

14 Highland as of June 30, 2020?

15 A. Yes.

16 Q. Okay. So just the same type of

17 questions.

18 Do you have any knowledge as to how

19 that number was calculated?

20 A. No.

21 Q. Do you know if it includes the

22 \$7.4 million, which is the aggregate principal

23 amount of the two notes that HCMFA issued to

24 Highland in May of 2019?

25 A. I don't specifically, but given

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1 JAMES DONDERO

2 everything that's going on with the Highland

3 bankruptcy in 2021.

4 And I'm not aware of what those

5 letters contain. I haven't seen those letters

6 either, but those letters may include quite a

7 bit of disclosure regarding the questions that

8 you're asking me; but I don't know. But I

9 didn't specifically instruct anybody to tell

10 the board. I also didn't instruct anybody

11 specifically to not tell the board.

12 So I don't know what was told to the

13 board for the period after October 2020.

14 Q. Okay. I appreciate that, and I can

15 only ask you what you know, right?

16 And so what may or may not be in any

17 other report is kind of irrelevant here because

18 you haven't seen those reports, right?

19 A. Correct.

20 Q. Okay. And so you have no basis of

21 knowing one way or the other whether any report

22 delivered to the retail board after October

23 2020 – 2020 contains anything about the

24 agreements that you entered into with the

25 Dugaboy trustee, correct?

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1 JAMES DONDERO

2 everything we have gone over in the last – I

3 don't know. Probably.

4 Q. Okay. Do you know whether anybody

5 has informed the retail board on behalf of

6 HCMFA that that \$12.3 million was overstated by

7 \$7.4 million?

8 A. I – I don't know.

9 Q. Okay. Do you know whether – do you

10 know whether anybody acting behalf of HCMFA

11 ever told the retail boards that the

12 \$12.3 million was subject to offset of any

13 kind?

14 A. I don't know, but I can't imagine

15 the October 21 letter didn't address some of

16 those issues because those issues I'm not sure

17 were known at this point in time.

18 Q. Okay. If – and we can look at

19 paragraph 1 if it helps.

20 But my question is whether you're

21 aware of anybody on behalf of HCMFA ever

22 informing the retail board in 2020 that HCMFA

23 had claims against Highland?

24 MS. DEITSCH-PEREZ: Object to the

25 form.

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1 JAMES DONDERO  
 2 THE WITNESS: I don't know.  
 3 BY MR. MORRIS:  
 4 Q. Do you know whether anybody acting  
 5 on behalf of either the advisors informed the  
 6 retail board at any time in the year 2020 that  
 7 either advisor had claims against Highland?  
 8 MS. DEITSCH-PEREZ: Object to the  
 9 form.  
 10 THE WITNESS: I don't know.  
 11 MR. MORRIS: Okay. We can take that  
 12 down, please.  
 13 MS. CANTY: (Complies with request.)  
 14 BY MR. MORRIS:  
 15 Q. Are you aware that the Court  
 16 confirmed the Debtor's Fifth Amended Complaint  
 17 of Reorganization in February of 2021?  
 18 A. Generally.  
 19 Q. And do you recall that objections to  
 20 the confirmation of the plan were filed by you  
 21 and each of the advisors, among others?  
 22 A. Yes.  
 23 Q. And do you recall that these  
 24 actions, these lawsuits to collect on the  
 25 notes, they were commenced before the

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1 JAMES DONDERO  
 2 Is that okay, sir?  
 3 A. I'll do the best I can. If I – if  
 4 I need clarity or caveats, I'll throw them out  
 5 there.  
 6 Q. Okay. Now, I do understand you're  
 7 not a 30(b)(6) witness for HCMFA today. So  
 8 let's make that clear.  
 9 MS. DEITSCH-PEREZ: Thank you.  
 10 BY MR. MORRIS:  
 11 Q. As to HCMFA, you're just here in  
 12 your individual capacity as the control person,  
 13 okay?  
 14 Prior to confirmation, do you know  
 15 whether anyone acting on behalf of any of the  
 16 defendants ever disclosed to the bankruptcy  
 17 court the terms or the existence of your  
 18 agreement – agreements with the Dugaboy  
 19 trustee?  
 20 A. I guess generally, I've testified to  
 21 this already. There were numerous  
 22 conversations with Seery, and I know Lynn had  
 23 conversations.  
 24 Q. Sir, I apologize, but I'm going to  
 25 interrupt because I know you're tired; and I

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1 JAMES DONDERO  
 2 confirmation hearing, right?  
 3 A. I – I don't – I don't know.  
 4 Q. All right. I'll represent to you  
 5 that the lawsuits were commenced on or about  
 6 January 22, and the confirmation hearing took  
 7 place, I think, on February 2 and February 3,  
 8 2021.  
 9 Does that refresh your recollection  
 10 at all that the lawsuits were known to you at  
 11 the time of confirmation?  
 12 MS. DEITSCH-PEREZ: Object to the  
 13 form.  
 14 THE WITNESS: Not specifically. I  
 15 mean, given the details you just explained,  
 16 I guess generally.  
 17 BY MR. MORRIS:  
 18 Q. Okay. I'd like to refer to you  
 19 NexPoint and HCMFA and HCRE and Services  
 20 collectively as the defendants for the next set  
 21 of questions, okay?  
 22 A. Okay.  
 23 Q. And these questions are in your  
 24 capacity as an individual and in your 30(b)(6)  
 25 capacity, okay?

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1 JAMES DONDERO  
 2 want to get this done. But my question had to  
 3 do with the disclosure to the bankruptcy court,  
 4 okay? Let me just try again.  
 5 Are you aware, sir, whether any of  
 6 the defendants disclosed to the bankruptcy  
 7 court prior to confirmation the existence of  
 8 the agreements that you entered into with the  
 9 Dugaboy trustee?  
 10 MS. DEITSCH-PEREZ: Object to the  
 11 form and to interrupting the witness.  
 12 THE WITNESS: I'll say yes.  
 13 BY MR. MORRIS:  
 14 Q. Okay. Did you do that?  
 15 A. Yes.  
 16 Q. And did you do that as part of your  
 17 testimony in the hearing, or did you do it  
 18 through the filing of a pleading?  
 19 MS. DEITSCH-PEREZ: Object to the  
 20 form.  
 21 THE WITNESS: I don't – I don't  
 22 know about pleadings or filings. I – I  
 23 don't know.  
 24 BY MR. MORRIS:  
 25 Q. Do you recall what you told the

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1 JAMES DONDERO  
 2 bankruptcy court about the agreements that you  
 3 entered into with the Dugaboy trustee?  
 4 A. No. I'm not – yes. No. I'm  
 5 not – no, I don't. I don't want to – I don't  
 6 want to start talking and have you strike it or  
 7 object. So I'll just answer specifically until  
 8 you get to the question.  
 9 Q. Yeah. So – so again, I'm not  
 10 trying to trick you.  
 11 Can you recall when you told the  
 12 bankruptcy court that you had entered into will  
 13 the agreements with the Dugaboy trustee?  
 14 A. No.  
 15 Q. Can you remember the subject matter  
 16 of any hearing at which you informed the  
 17 bankruptcy court about the existence of the  
 18 agreements that you entered into with the  
 19 Dugaboy trustee?  
 20 A. I don't know where or how this works  
 21 legally. But every written proposal we put  
 22 forward as a solution and as a plot plan,  
 23 always had a zero on all the affiliated notes  
 24 as being a zero in something that was  
 25 ultimately likely to be compensation.

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1 JAMES DONDERO  
 2 reach outs – reaches out to creditors directly  
 3 again and – to Clemente and the committee; but  
 4 I think the committee already sold all their  
 5 stuff by that point.  
 6 I mean, I – listen, I – but I  
 7 consider those reach-outs and characterizations  
 8 of the notes as not part of settlement under  
 9 the estate and that is likely to be  
 10 compensation notifying the Court generally.  
 11 Q. Okay. Are you aware of any notice  
 12 that was ever given to Judge Jernigan about the  
 13 existence of any of the agreements that you  
 14 entered into with the Dugaboy trustee?  
 15 A. I - I don't know.  
 16 Q. Okay. You're not aware of any as  
 17 you sit here right now; is that fair?  
 18 A. Yes. I'm not aware if any of my  
 19 reach-outs to the people that I described ever  
 20 made it to Jernigan. I don't know.  
 21 Q. Okay.  
 22 A. I know she asked for updates on the  
 23 plot plan. I know she asked for whatever, but  
 24 I don't know what specificity any of the people  
 25 I described presented them to her. So I don't

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1 JAMES DONDERO  
 2 All of those settlement proposals,  
 3 some were done formally through Seery; some  
 4 were done indirectly; some of it were – some  
 5 of them were done to the independent board;  
 6 some of them were done directly to Clemente.  
 7 But all of those documented the expectation  
 8 that the notes were compensation.  
 9 Q. Do you believe that any of the  
 10 documents that you just described were ever  
 11 presented to the bankruptcy court?  
 12 A. Yes.  
 13 Q. Okay. When and in what context were  
 14 those documents delivered to the bankruptcy  
 15 court?  
 16 A. I believed that the independent  
 17 board and Seery were representatives of the  
 18 bankruptcy court in that regard.  
 19 So I think within a month, two  
 20 months of the filing, there were proposals made  
 21 to creditors directly and the independent  
 22 board; and then subsequently, once Seery became  
 23 president, to him.  
 24 And then when Seery proved  
 25 ineffective regarding settlements, there were

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1 JAMES DONDERO  
 2 know.  
 3 Q. And I appreciate what you've said  
 4 about the proposals that you've made. But my  
 5 next question's very specific.  
 6 Prior to the commencement of  
 7 litigation, did you or anybody acting on your  
 8 behalf ever tell Jim Seery or Matt Clemente of  
 9 your agreements with the Dugaboy trustee?  
 10 A. I – I don't know specifically.  
 11 Q. Thank you very much.  
 12 THE COURT REPORTER: I'm sorry.  
 13 When you get to a good point, could we just  
 14 take a quick break?  
 15 MR. MORRIS: Yeah. Why don't we do  
 16 that, and I hope to try to wrap up. So  
 17 it's 5:37. I mean, I'm going to need  
 18 probably, you know, another half hour or an  
 19 hour; but I want to try to finish. It's  
 20 5:38.  
 21 I'm fine with if we just come back  
 22 at 4:45 Central Time, seven minutes.  
 23 THE VIDEOGRAPHER: All right. We're  
 24 off record at 4:38.  
 25 (Whereupon, a break was taken.)



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1 JAMES DONDERO  
 2 THE VIDEOGRAPHER: This is the  
 3 beginning of Media Number 3 in the  
 4 deposition of James Dondero. We are back  
 5 on the record. The time is 4:45.  
 6 BY MR. MORRIS:  
 7 Q. Just to finish up on the topic we  
 8 were on when we took the break, Mr. Dondero.  
 9 Prior to confirmation, do you know  
 10 which of the defendants ever informed the  
 11 bankruptcy court that any of the Promissory  
 12 Notes that are the subject of the lawsuits were  
 13 unenforceable for any reason?  
 14 And when I use the phrase  
 15 "bankruptcy court" here – you know what, let  
 16 me ask a different question.  
 17 Prior to confirmation, do you know  
 18 if anybody acting on behalf of the defendants  
 19 ever disclosed to Judge Jemigan that any of  
 20 the Promissory Notes subject to the lawsuits  
 21 were unenforceable for any reason?  
 22 MS. DEITSCH-PEREZ: Object to the  
 23 form.  
 24 THE WITNESS: I don't know.  
 25

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1 JAMES DONDERO  
 2 any amounts that were due and owing to Highland  
 3 under any agreement between Highland and any  
 4 affiliate?  
 5 MS. DEITSCH-PEREZ: Object to the  
 6 form.  
 7 Are you asking about the Notes or  
 8 the Shared Services Agreements?  
 9 MR. MORRIS: I'm asking about – I'm  
 10 asking very broadly any payments.  
 11 THE WITNESS: I do remember having  
 12 conversations not to pay any more shared  
 13 services.  
 14 And I hope there weren't anymore  
 15 payments on shared services. There –  
 16 There was never a specific to not pay the  
 17 notes.  
 18 BY MR. MORRIS:  
 19 Q. So your recollection is that you  
 20 instructed Mr. Waterhouse not to make any  
 21 further payments under the shared services, and  
 22 that's the instruction you gave?  
 23 A. Yes.  
 24 Q. Did you ever tell anybody in  
 25 December of 2020 about your conversation with

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1 JAMES DONDERO  
 2 BY MR. MORRIS:  
 3 Q. Prior to confirmation, did you  
 4 direct anybody to inform Judge Jemigan that  
 5 any of the Promissory Notes were unenforceable  
 6 for any reason?  
 7 A. I don't know.  
 8 Q. Okay. I want to direct your  
 9 attention to December 2020.  
 10 Do you recall if you had a  
 11 conversation with Frank Waterhouse concerning  
 12 payments that were due to Highland by any of  
 13 the companies that you directly or indirectly  
 14 own or control?  
 15 A. I'm trying to think. Generally, we  
 16 overpaid on shared services, so – by a  
 17 significant amount, I believe 14, 15 million  
 18 bucks. And then there was a supposed to be an  
 19 overall transition settlement true-up regarding  
 20 the employees, the office space, you know,  
 21 whatever.  
 22 So the – yeah, that's – that's the  
 23 – that's my general recollection.  
 24 Q. But did you give Mr. Waterhouse any  
 25 instructions as to whether to pay or not pay

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1 JAMES DONDERO  
 2 Mr. Waterhouse?  
 3 A. Not that I recall.  
 4 Q. Do you recall telling anybody other  
 5 than Mr. Waterhouse in December 2020 that no  
 6 payment should be made to Highland under the  
 7 Shared Services Agreement?  
 8 A. I do believe there was a team – I  
 9 can't remember – I know Dustin Norris is on  
 10 that team. He was aware. He was aware. And  
 11 as a matter of fact, I think – yeah. He – I  
 12 know he was aware for sure.  
 13 Q. Anybody else?  
 14 A. There were other people on that  
 15 team, but I can't remember who was on that team  
 16 or who was in the room at any time.  
 17 Q. Is there anything in writing that  
 18 you recall that reflects the instruction that  
 19 you gave to Mr. Waterhouse in December 2020  
 20 that we're talking about?  
 21 A. I believe the back-and-forth and the  
 22 true-up with Seery on the multiple of things  
 23 that I was just discussing, you know, right to  
 24 transition of people, it included no more  
 25 shared services being paid and a credit for

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1 JAMES DONDERO  
 2 overpayment on shared services. And those –  
 3 those spreadsheets went back and forth, and  
 4 Seery has copies of them also.  
 5 Q. Are you aware of any payments being  
 6 made by the advisors to Highland after  
 7 November 30, 2020?  
 8 A. Hopefully not on shared services. I  
 9 believe there were payments on principal and  
 10 interest on notes.  
 11 Q. Were any of those payments that you  
 12 have in mind made before the end of calendar  
 13 year 2020 – withdrawn.  
 14 Were any of those payments that you  
 15 have in mind made in December 2020?  
 16 A. I don't know. I don't know which  
 17 ones were paid and kept current. I don't know  
 18 which ones were cured. I don't – I don't  
 19 remember which ones were which.  
 20 Q. Are you aware of any note that was  
 21 tendered by one of Highland's affiliates on  
 22 which payment was made in December 2020?  
 23 A. I don't know. I don't know when –  
 24 I don't know which ones were kept current. I  
 25 don't know which ones were cured in December.

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1 JAMES DONDERO  
 2 Q. Are you just talking about the term  
 3 notes here or the demand notes as well?  
 4 A. All of the above. All of the notes  
 5 as far as I know.  
 6 Q. Are you aware that in December 2020,  
 7 Highland made a demand for payment under all of  
 8 the demand notes?  
 9 A. And I believe they're all current as  
 10 far as interest and principal amortization. I  
 11 believe they've all been cured.  
 12 Q. Okay. Can you identify any payment  
 13 that was made in December 2020 to Highland on  
 14 behalf of yourself or any entity that you  
 15 directly or indirectly own or control?  
 16 A. I wouldn't have been involved in –  
 17 I wouldn't have been involved in normal course  
 18 payments. I know there were – I know for sure  
 19 there were cure payments in January. I don't  
 20 know if there were in December.  
 21 Q. Okay. And that's – we'll get to  
 22 January. I'm just trying to finish up  
 23 December.  
 24 Are you aware of any payments made  
 25 in December 2020 –

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1 JAMES DONDERO  
 2 I don't know which ones were cured in January  
 3 or February. I don't know.  
 4 Q. Is it your testimony that you  
 5 believe that one or more of Highland affiliates  
 6 made a payment in December 2020 to cure – as a  
 7 cure payment?  
 8 MS. DEITSCH-PEREZ: Object to the  
 9 form.  
 10 BY MR. MORRIS:  
 11 Q. I just – I'm sorry. I –  
 12 A. I – I – okay.  
 13 Q. Yeah. I just want to try to get  
 14 this as clearly as I can. Did you –  
 15 A. I believe –  
 16 Q. Go ahead, sir.  
 17 A. No. I'll let you go. It's better  
 18 if you ask me.  
 19 Q. Okay. Did you direct anybody to  
 20 make any payment in December 2020 to Highland  
 21 on behalf of any affiliate that you owned or  
 22 controlled?  
 23 A. I believe all notes are outstanding  
 24 and current and in good standing. I don't know  
 25 when they were cured.

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1 JAMES DONDERO  
 2 MS. DEITSCH-PEREZ: Object to the  
 3 form.  
 4 BY MR. MORRIS:  
 5 Q. – by you – by you or any entity  
 6 directly or indirectly owned or control by you  
 7 to Highland?  
 8 A. I don't have awareness.  
 9 Q. Do you recall that early in 2021,  
 10 Highland gave notice of default on the three  
 11 term notes?  
 12 A. I'm aware in – that January – yes,  
 13 I guess I am aware that Highland declared them  
 14 in default in January, yes.  
 15 Q. And you're aware that in addition to  
 16 declaring them in default, they gave notice of  
 17 acceleration?  
 18 A. I'm not aware of acceleration. I'm  
 19 aware of, I guess, default I had heard.  
 20 Q. Did you ever see the  
 21 notice-of-default letters that Highland sent to  
 22 NexPoint HCRE and services?  
 23 A. I don't believe I've seen all of  
 24 them. I think I've seen one on demand notes.  
 25 I don't think I've – I don't remember seeing

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1 JAMES DONDERO  
 2 any on term loans.  
 3 Q. All right. So as you sit here right  
 4 now, you don't have a recollection of having  
 5 seen the default notices that were sent by  
 6 Highland in January 2021 with respect to the  
 7 term notes, right?  
 8 MS. DEITSCH-PEREZ: Why don't you  
 9 show him one.  
 10 THE WITNESS: I don't recall. Yeah.  
 11 I mean, I don't – I don't recall seeing  
 12 any of them.  
 13 BY MR. MORRIS:  
 14 Q. Okay. How did you learn that  
 15 Highland had sent the default notices?  
 16 A. I believe it was at a hearing I  
 17 attended in person from which I called Frank,  
 18 and I was surprised and annoyed that the  
 19 relative de minimis amounts hadn't been paid;  
 20 and I asked him what does it take to cure them  
 21 or make them current.  
 22 And then he told me the numbers, and  
 23 they were small and de minimis; and I told him  
 24 make sure they get paid and make sure the notes  
 25 are cured.

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1 JAMES DONDERO  
 2 lawyer, with Mr. Seery, about this?  
 3 MS. DEITSCH-PEREZ: Object to the  
 4 form.  
 5 THE WITNESS: No. I thought Frank  
 6 was fully empowered.  
 7 BY MR. MORRIS:  
 8 Q. Okay. Did you ever confirm your  
 9 understanding about the cure with  
 10 Mr. Waterhouse in writing?  
 11 A. In writing? No. I believe it was  
 12 all in that phone conversation from the Court.  
 13 I don't – I don't recall anything in writing,  
 14 but I'll check.  
 15 Q. Do you recall sending him an e-mail  
 16 in which you confirmed with Mr. Waterhouse your  
 17 understanding that the debtor had agreed that  
 18 the payments that were being paid would  
 19 constitute a cure?  
 20 A. No, I didn't – no. At the time I  
 21 didn't think it was necessary. It was – the  
 22 cure amount was calculated by Frank. It was  
 23 paid immediately. It was accepted. I never –  
 24 I never thought to memorialize it beyond that.  
 25 Q. Okay. Did you – did you ever ask

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1 JAMES DONDERO  
 2 Q. Did you do anything or say anything  
 3 else with respect to your – your learning  
 4 about the declaration of default?  
 5 A. No. It – no. I don't remember  
 6 anything else.  
 7 Q. Did you ask your – do you know  
 8 whether anyone acting on behalf of ever reached  
 9 out to Highland with respect to the payments  
 10 that were made in January of 2021 as cure  
 11 payments as you described them?  
 12 A. Frank was Highland.  
 13 Q. I'm asking –  
 14 A. Frank – Frank – Frank was the  
 15 person I reached out to at Highland. Who else  
 16 would I reach out to at Highland?  
 17 Q. Did you – did you reach out to  
 18 anybody else?  
 19 A. No. Just Frank.  
 20 Q. Okay. Did anybody acting on your  
 21 behalf reach out to anybody else?  
 22 A. Not that I know of or not that I  
 23 thought was necessary.  
 24 Q. In January of 2021, did it occur to  
 25 you to either communicate with or through your

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1 JAMES DONDERO  
 2 your attorneys to confirm with Pachulski Stang  
 3 Ziehl & Jones or anybody acting on behalf of  
 4 the debtor that the payments that were made  
 5 would be deemed to be cure payments?  
 6 MS. DEITSCH-PEREZ: I'm going to not  
 7 to disclose communications with counsel.  
 8 BY MR. MORRIS:  
 9 Q. Okay. Do you know whether your  
 10 lawyers or anybody acting on your behalf ever  
 11 sought to confirm your understanding that the  
 12 payments would be deemed to have cured the  
 13 default under the three term notes?  
 14 A. Not that I'm aware of.  
 15 Q. Okay. Is there any written record  
 16 of your call with Mr. Waterhouse?  
 17 A. If it was from my cell phone, I'm  
 18 sure there's a written record taking place of  
 19 the call taking place.  
 20 Q. Right. But did you take any notes,  
 21 or is there anything in writing that  
 22 memorialized or reflected your conversation  
 23 with Mr. Waterhouse in January of 2021 about  
 24 the cure?  
 25 A. Not that I'm aware of and not that I

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1 JAMES DONDERO  
 2 thought was necessary.  
 3 Q. Okay. Did – did you ever tell  
 4 Judge Jernigan that you had made cure payments?  
 5 A. I didn't know I'm allowed to have  
 6 ex parte conversations with her, but there's a  
 7 lot of things I'd like to tell her about this  
 8 case; but no I did not.  
 9 Q. All right. I'm not talking about  
 10 ex parte conversations, sir. Let's take  
 11 confirmation, for example.  
 12 Did you or anybody acting on any of  
 13 the defendants' behalf ever inform  
 14 Judge Jernigan that Frank Waterhouse had told  
 15 you that the payments in January 2021 would be  
 16 deemed to be cure payments?  
 17 A. Not that I'm aware of.  
 18 Q. Thank you.  
 19 MR. MORRIS: Give me one more  
 20 moment. In fact, I'm going to ask for just  
 21 three minutes. I'm going to check and see  
 22 how much more I have here. It won't be  
 23 long if I have anything. So let's go off  
 24 the record.  
 25 THE VIDEOGRAPHER: Would you like to

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1 JAMES DONDERO  
 2 MS. DEITSCH-PEREZ: Do you got it?  
 3 THE WITNESS: Yes.  
 4 BY MR. MORRIS:  
 5 Q. Have you seen this document before,  
 6 sir?  
 7 A. No.  
 8 Q. Let's go to page 15 and see if that  
 9 refreshes your recollection.  
 10 Is that your signature?  
 11 A. Yes.  
 12 MS. DEITSCH-PEREZ: Yeah. It's late  
 13 in the day, John.  
 14 THE WITNESS: Yes.  
 15 MR. MORRIS: That's why I showed him  
 16 the signature.  
 17 BY MR. MORRIS:  
 18 Q. Does that refresh your recollection  
 19 that you've seen this before?  
 20 A. No. It refreshes my recollection  
 21 that I signed it.  
 22 Q. Okay. And –  
 23 A. Not that I recall – not that I  
 24 looked at it in detail in any way.  
 25 Q. Okay. Did you review it before you

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1 JAMES DONDERO  
 2 go off the record?  
 3 All right. We're off record at  
 4 5:03.  
 5 (Whereupon, a break was taken.)  
 6 THE VIDEOGRAPHER: We are back on  
 7 the record. The time is 5:06.  
 8 MR. MORRIS: Okay. Asia, can you  
 9 please put on the screen Exhibit 24, which  
 10 are Mr. Dondero's written responses to  
 11 discovery?  
 12 MS. CANTY: (Complies with request.)  
 13 (Whereupon, Exhibit 24, Defendant  
 14 James Dondero's Objections and Responses to  
 15 Plaintiff's Requests for Admission,  
 16 Interrogatories, and Requests for  
 17 Production, marked for identification, as  
 18 of this date.)  
 19 BY MR. MORRIS:  
 20 Q. And Mr. Dondero, I don't know if you  
 21 have that binder in front of you, but this is  
 22 one of the documents that will be in there,  
 23 Number 24.  
 24 A. Number 24?  
 25 Q. Yes, sir.

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1 JAMES DONDERO  
 2 signed it?  
 3 A. I – as I sit here today, I don't  
 4 remember. So let's go through whatever  
 5 questions you have.  
 6 Q. Okay.  
 7 MR. MORRIS: Go to page 8, please.  
 8 MS. CANTY: (Complies with request.)  
 9 BY MR. MORRIS:  
 10 Q. You will see that Interrogatories 3  
 11 and 4 ask in substance for you to admit that  
 12 you never disclosed the terms or existence of  
 13 the agreement to Frank Waterhouse prior to the  
 14 commencement of the adversary proceeding.  
 15 Do you see that?  
 16 MS. DEITSCH-PEREZ: Wait. Object to  
 17 the form. Those are two different  
 18 requests.  
 19 MR. MORRIS: Okay. Okay. I was  
 20 trying to do this quickly. We'll do it –  
 21 we'll do it – we'll do it your way?  
 22 MS. DEITSCH-PEREZ: No. I think you  
 23 – okay.  
 24 BY MR. MORRIS:  
 25 Q. So let's look at Request for

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1 JAMES DONDERO  
 2 Admission Number 3.  
 3 Do you see that Highland asked you  
 4 to admit, quote, "that prior to the  
 5 commencement of the adversary proceeding, you  
 6 never disclosed the terms of the agreement to  
 7 Frank Waterhouse," close quote?  
 8 A. That's on page 8, Number 3, right?  
 9 Q. Correct. And you denied that,  
 10 correct?  
 11 A. Yes.  
 12 Q. Okay. Did you disclose the terms of  
 13 the agreement as we've defined that term to  
 14 Frank Waterhouse prior to the commencement of  
 15 the adversary proceeding?  
 16 A. You know, what I've answered was a  
 17 long answer earlier that the notes were  
 18 compensation. The notes were to be – would be  
 19 forgiven as part of compensation, shouldn't be  
 20 included in any settlement.  
 21 Frank and his group were deeply  
 22 involved in all the plot plan and settlement,  
 23 things that went back and forth. He knew.  
 24 Now, whether he knew the specifics  
 25 of the agreement in terms of, whether I ever

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1 JAMES DONDERO  
 2 A. There wasn't another reason – there  
 3 – no, I don't remember any other context.  
 4 Q. Okay.  
 5 A. But the settlements were regular and  
 6 ongoing –  
 7 Q. Okay.  
 8 A. – in our mind, not in the  
 9 Stonehill's mind.  
 10 Q. Okay. Can you go – can we go to  
 11 page 9, Request for Admission Number 8?  
 12 A. Yes.  
 13 Q. Number 8 we asked you to "admit that  
 14 no document was created prior to the  
 15 commencement of the adversary proceeding  
 16 concerning the existence of the agreement."  
 17 Have I read that right –  
 18 A. I'm just reading what's on page 9,  
 19 admit that prior to the agreement he never  
 20 disclosed any other creditor.  
 21 Q. No, no, no. I'm sorry. We're on  
 22 Number 8.  
 23 Can you read Number 8 out loud?  
 24 A. Number 8, I'm sorry. Admit that no  
 25 document was created prior to the commencement

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1 JAMES DONDERO  
 2 discussed the MGM Cornerstone, Trustway, and  
 3 the specifics of the agreement with him before,  
 4 I don't – I don't know. So...  
 5 Q. Do you –  
 6 A. I think denying is appropriate, but  
 7 I'm at not saying Frank knew the specifics of  
 8 the agreement prior to the commencement of  
 9 litigation.  
 10 Q. Did you tell him that you had an  
 11 agreement with the Dugaboy trustee?  
 12 A. I told him there were mechanisms for  
 13 forgiving the – or there were – there were  
 14 mechanisms for the notes being compensation and  
 15 not being part of any kind of cement or asset  
 16 to the estate.  
 17 Q. Okay. Do you recall telling him  
 18 anything else during these conversations?  
 19 A. No, I didn't – no. I didn't feel  
 20 it necessary to talk to him about the  
 21 specifics.  
 22 Q. Okay. And do you recall having this  
 23 discussion in any context other than in  
 24 connection with the preparation of a settlement  
 25 proposal?

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1 JAMES DONDERO  
 2 of the adversary proceeding concerning the  
 3 existence of the agreement.  
 4 Q. All right. So you've read that.  
 5 And so my question to you is: Did you deny  
 6 that because there are settlement proposals  
 7 that you created that show zero value for the  
 8 Promissory Notes at issue?  
 9 A. Yes, partly.  
 10 Q. Okay. What other documents were  
 11 created prior to the commencement of the  
 12 adversary proceeding that you contend concerned  
 13 the existence of the agreement?  
 14 A. I'm trying to think if the LPA does.  
 15 Q. Okay. Anything else?  
 16 A. No. That would be – that would be  
 17 it.  
 18 Q. Okay. Request for Admission  
 19 Number 9, can you identify the creditor that  
 20 caused you to deny the Request for Admission  
 21 Number 9?  
 22 A. I believe all the creditors via the  
 23 settlement agreements; but, you know,  
 24 specifically Clubock, you know, and to the  
 25 extent Frank is a creditor, Frank.

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1 JAMES DONDERO  
 2 Q. But you just testified a few minutes  
 3 ago, I thought, that you didn't specifically  
 4 tell Mr. Waterhouse of the terms of the  
 5 agreements to him, right? Did I miss –  
 6 A. That's right. I mean, not the  
 7 specific terms, correct.  
 8 Q. Okay. So is there any creditor to  
 9 whom you – is there any creditor of Highland's  
 10 to whom you disclosed the existence of the  
 11 agreements that you entered into with the  
 12 Dugaboy trustee prior to the commencement of  
 13 the adversary proceeding?  
 14 MS. DEITSCH-PEREZ: Asked and  
 15 answered.  
 16 THE WITNESS: Yeah. I mean,  
 17 generally, all the creditors via the  
 18 settlement. And then we have lots of  
 19 one-off conversations with Clubock  
 20 representing UBS where the notes were  
 21 described as going to be forgiven  
 22 compensation, never part of the estate.  
 23 BY MR. MORRIS:  
 24 Q. All right. I don't – I don't want  
 25 to wrestle with you.

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1 JAMES DONDERO  
 2 MS. DEITSCH-PEREZ: Object to the  
 3 form.  
 4 THE WITNESS: 24, I'm sorry.  
 5 Page 2?  
 6 BY MR. MORRIS:  
 7 Q. Page 12.  
 8 A. Page 12. Yes. Which one?  
 9 Q. Number 2.  
 10 A. All right.  
 11 Q. You didn't identify any email  
 12 correspondence in response to Interrogatory  
 13 Number 2; is that correct?  
 14 A. I don't have my e-mails. So we have  
 15 painfully little from the Highland estate.  
 16 Q. Okay.  
 17 A. I think at the time we responded, we  
 18 thought we might get access to things; but we  
 19 haven't been able to come up with anything. We  
 20 have – we have no access to anything.  
 21 Q. Okay. So as you sit here today, you  
 22 cannot identify any e-mail correspondence that  
 23 discusses the existence of the agreement,  
 24 correct?  
 25 A. Not yet, no.

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1 JAMES DONDERO  
 2 A. Sure.  
 3 Q. I'm going to remind you that when I  
 4 use the word "agreements," I'm referring  
 5 specifically to the agreements that were set  
 6 forth in paragraph 82 of your answer.  
 7 Do you understand that?  
 8 A. Yes. And so I guess my answer is  
 9 generally but not specifically.  
 10 Q. Okay. And when you say "generally,"  
 11 you don't mean that you disclosed the existence  
 12 or terms of the agreement to any creditor.  
 13 What you mean is that you told all of the  
 14 creditors that you believed that the notes  
 15 should be forgiven as part of compensation.  
 16 Do I have that right?  
 17 A. Well, that they would be forgiven as  
 18 part of compensation.  
 19 Q. Okay. Subject to that correction,  
 20 are we on the same page now?  
 21 A. Yes.  
 22 Q. Okay. Can we go to page 12,  
 23 Interrogatory Number 2?  
 24 A. This is still in Section 24?  
 25 Q. Yes, sir.

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1 JAMES DONDERO  
 2 (Whereupon, Exhibit 27, Defendant  
 3 NexPoint Advisors, L.P.'s Objections and  
 4 Responses to Plaintiff's Requests for  
 5 Admission, Interrogatories, and Requests  
 6 for Production, marked for identification,  
 7 as of this date.)  
 8 BY MR. MORRIS:  
 9 Q. Let's go to Exhibit Number 27.  
 10 A. Yes.  
 11 Q. And if we can go to page 7.  
 12 MR. MORRIS: I think – I don't know  
 13 who's shuffling paper.  
 14 BY MR. MORRIS:  
 15 Q. But if we're at page 7, we're  
 16 looking at Interrogatory Number 3.  
 17 Is the reason for the denial – and  
 18 I apologize. I may be going too quickly  
 19 because I know we're all anxious to finish, but  
 20 I do want to represent to you that we're  
 21 looking at the discovery responses of NexPoint  
 22 Advisors.  
 23 A. Right.  
 24 Q. And if we went to page 12, we'd find  
 25 your signature on that one, okay? So looking

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1 JAMES DONDERO  
 2 at –  
 3 A. Yes.  
 4 Q. – Request for Admission Number 3,  
 5 is your answer the same on behalf of NexPoint  
 6 Advisors as it was for yourself as to why you  
 7 denied Request for Admission Number 3?  
 8 A. Yes.  
 9 Q. Okay. If we can go to Request for  
 10 Admission Number 6, that is the same Request  
 11 for Admission that we talked about with respect  
 12 to yourself in your individual capacity a  
 13 moment ago.  
 14 Is your reason for denying Request  
 15 for Admission Number 6 the same reason that you  
 16 gave for yourself?  
 17 A. Yes.  
 18 Q. And looking at Request for  
 19 Admissions Number 7 and 8, is the reason that  
 20 you denied those Requests for Admissions  
 21 because you told Seery and the committee and  
 22 Clubock that you wouldn't pay anything for the  
 23 notes because they were supposed to be forgiven  
 24 as part of your compensation?  
 25 A. And the independent board, yes.

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1 JAMES DONDERO  
 2 whenever you get the regular done. No  
 3 special rush.  
 4 THE COURT REPORTER: Okay. Thank  
 5 you.  
 6 MS. DEITSCH-PEREZ: You're welcome.  
 7 THE COURT REPORTER: Ms. Canty, I  
 8 think there's a standing order for a daily  
 9 delivery – or an immediate delivery for  
 10 your firm?  
 11 MS. CANTY: Yes.  
 12 THE COURT REPORTER: Okay. I just  
 13 wanted to confirm that. I'll get that out  
 14 tonight, then.  
 15 MS. CANTY: Okay, thank you.  
 16 (The witness is excused.)  
 17 (Deposition of James Dondero  
 18 concluded at 5:21 p.m. CDT.)  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 JAMES DONDERO  
 2 Q. Okay. Is there any other reason  
 3 that you denied Request for Admissions Number 7  
 4 and 8?  
 5 A. Not that I can think of at this  
 6 point in time.  
 7 I don't think the LPA applies much  
 8 here, but I may be –  
 9 MR. MORRIS: All right. I have no  
 10 further questions.  
 11 THE WITNESS: Wonderful. Thank you.  
 12 Have a good evening.  
 13 MR. MORRIS: Thank you. Take care.  
 14 MS. DEITSCH-PEREZ: Thank you.  
 15 MR. MORRIS: Bye now.  
 16 THE VIDEOGRAPHER: All right. If  
 17 there are no further questions, this  
 18 concludes today's deposition. Volume II  
 19 [sic] consists of three media. We are off  
 20 the record at 5:21 p.m.  
 21 THE COURT REPORTER: Everybody is  
 22 leaving, and I wanted to get everybody's  
 23 order on the record.  
 24 MS. DEITSCH-PEREZ: I'd like the  
 25 rough. And then the regular can be

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1 C E R T I F I C A T E  
 2  
 3  
 4 I, SUZANNE J. STOTZ, a Certified  
 5 Shorthand Reporter, Registered Professional  
 6 Reporter, Certified Realtime Reporter, and  
 7 Notary Public in and for the State of Texas, do  
 8 hereby certify that the foregoing is a true and  
 9 accurate transcript of the stenographic  
 10 above-captioned matter.  
 11  
 12  
 13 \_\_\_\_\_  
 14 SUZANNE J. STOTZ, CSR, RPR, CRR  
 15 Texas Certification No. 11942  
 16  
 17  
 18 DATED: November 4, 2021  
 19  
 20  
 21 NOTE: THE CERTIFICATE APPENDED TO THIS  
 22 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION  
 23 OF THE SAME BY ANY MEANS, UNLESS UNDER THE  
 24 DIRECT CONTROL AND/OR DIRECTION OF THE  
 25 CERTIFYING COURT REPORTER.

1 ERRATA SHEET

2 I have read my testimony in the foregoing  
3 transcript and believe it to be true and  
4 correct to the best of my knowledge and belief  
5 with the following changes:

6 PAGE LINE CHANGE

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 WITNESS SIGNATURE DATE

20

21 Sworn and subscribed to before me this

22 \_\_\_\_ day of \_\_\_\_\_, 2021.

23

24 Notary Public of the

25 State of \_\_\_\_\_.



<p style="text-align: center;"><b>\$</b></p> <hr/> <p><b>\$1.55-million</b> 64:22</p> <p><b>\$12.3</b> 140:13 141:6, 12</p> <p><b>\$2</b> 62:6</p> <p><b>\$2.4</b> 91:11,13,23 92:6,11,14 93:12 103:17 104:2 107:23 109:2,25 110:13,23</p> <p><b>\$2.4-million</b> 91:19</p> <p><b>\$23</b> 138:13</p> <p><b>\$23.7</b> 137:10,22</p> <p><b>\$250,000</b> 58:20</p> <p><b>\$5</b> 101:22 102:17 111:17,21,24 112:4, 10 117:9 119:23</p> <p><b>\$5-million</b> 116:16 120:10</p> <p><b>\$500,000</b> 62:5</p> <p><b>\$6</b> 99:6,16,22</p> <p><b>\$6,068,851</b> 98:18</p> <p><b>\$7.4</b> 90:17 125:4 129:5 140:22 141:7</p> <p><b>\$7.44</b> 102:7</p> <p><b>\$7.5</b> 119:10,14,16</p> <p><b>\$7.8</b> 103:5</p> <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <p><b>000025</b> 130:19</p> <p><b>000031</b> 130:19</p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>1</b> 9:3 94:3 141:19</p> <p><b>100</b> 96:24</p> <p><b>12</b> 171:22 172:7,8 173:24</p> <p><b>13</b> 26:14</p> <p><b>14</b> 26:14 151:17</p>	<p><b>15</b> 151:17 164:8</p> <p><b>15-C</b> 130:11 131:3 137:3</p> <p><b>17</b> 20:20</p> <p><b>18</b> 20:8 26:13 71:16 73:15</p> <p><b>19</b> 20:8</p> <p><b>1939</b> 104:7</p> <p><b>1:17</b> 9:11</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>2</b> 52:24 94:19 97:15 108:25 132:9 135:15, 18 136:13 143:7 171:23 172:5,9,13</p> <p><b>2,500,024</b> 60:10</p> <p><b>2.4</b> 104:14 110:20</p> <p><b>2.5</b> 61:5</p> <p><b>20</b> 57:16 58:2</p> <p><b>200,000</b> 64:22</p> <p><b>2016</b> 57:13,21 58:18 59:3</p> <p><b>2017</b> 20:8,21 60:2,9 62:6 63:17 73:14 137:17</p> <p><b>2018</b> 20:21 23:4 122:24 123:9,16 129:4</p> <p><b>2019</b> 23:5 25:3 90:16, 25 91:13,24 97:15 99:22 102:7 108:10, 25 110:3,25 111:20, 25 112:5,10,18 113:3 114:9 116:15 117:5 119:9,24 120:11 123:24 124:25 128:14 140:24</p> <p><b>2020</b> 25:3,9 109:21 130:9,18,23 133:19, 23 136:11 137:3,8,9 138:20 139:13,23 140:14 141:22 142:6 151:9 152:25 153:5, 19 154:7,13,15,22 155:6,20 156:6,13,25</p>	<p><b>2021</b> 9:10 136:7,20 139:3 142:17 143:8 157:9 158:6 159:10, 24 161:23 162:15</p> <p><b>21</b> 141:15</p> <p><b>22</b> 143:6</p> <p><b>23</b> 130:18,23 133:18, 23 136:11</p> <p><b>24</b> 163:9,13,23,24 171:24 172:4</p> <p><b>252</b> 124:3</p> <p><b>27</b> 173:2,9</p> <p><b>2:28</b> 66:12</p> <p><b>2:43</b> 66:15</p> <p><b>2:44</b> 67:5</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>3</b> 117:5 119:23 123:24 143:7 150:3 165:10 166:2,8 173:16 174:4,7</p> <p><b>30</b> 8:18 12:6,22 22:3, 4,5 137:9 140:14 154:7</p> <p><b>30(b)(6)</b> 14:23 15:7 17:4 18:18,21 68:24 76:24 143:24 144:7</p> <p><b>300,000</b> 64:23</p> <p><b>31</b> 10:16 82:10 122:24 123:9,15 129:4 137:17</p> <p><b>34</b> 22:5 123:4,6</p> <p><b>35</b> 22:6</p> <p><b>36</b> 22:6</p> <p><b>375</b> 102:10</p> <p><b>39</b> 104:8 124:23</p> <p><b>3:21</b> 94:6</p> <p><b>3:22</b> 94:21</p> <p><b>3:28</b> 66:7</p> <p><b>3:40</b> 66:8</p> <p><b>3:53</b> 115:9</p>	<p><b>3:54</b> 115:12</p> <p><b>3rd</b> 111:20</p> <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <p><b>4</b> 9:10 165:11</p> <p><b>4.4M</b> 118:5</p> <p><b>40</b> 12:6,24</p> <p><b>47</b> 104:9</p> <p><b>4:38</b> 149:24</p> <p><b>4:45</b> 149:22 150:5</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>5</b> 103:5</p> <p><b>50</b> 59:17,19 82:8</p> <p><b>50,000</b> 57:20</p> <p><b>51</b> 82:7</p> <p><b>53</b> 93:18 94:23 95:3 97:12 136:2</p> <p><b>54</b> 107:10,12 136:2</p> <p><b>56</b> 116:20,22</p> <p><b>57</b> 118:24 119:3</p> <p><b>59</b> 130:15,17</p> <p><b>5:03</b> 163:4</p> <p><b>5:06</b> 163:7</p> <p><b>5:21</b> 175:20 176:18</p> <p><b>5:37</b> 149:17</p> <p><b>5:38</b> 149:20</p> <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>6</b> 174:10,15</p> <p><b>65,772</b> 63:12</p> <p><b>68</b> 55:21 56:2,9</p> <hr/> <p style="text-align: center;"><b>7</b></p> <hr/> <p><b>7</b> 173:11,15 174:19 175:3</p> <p><b>70</b> 58:3</p>	<p><b>75</b> 35:3</p> <hr/> <p style="text-align: center;"><b>8</b></p> <hr/> <p><b>8</b> 165:7 166:8 168:11, 13,22,23,24 174:19 175:4</p> <p><b>82</b> 13:3,12,17 14:3 39:16 47:10,20 48:8 81:25 82:10,11,17 83:18 171:6</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>9</b> 25:9 168:11,18 169:19,21</p> <p><b>90-day</b> 47:22</p> <hr/> <p style="text-align: center;"><b>A</b></p> <hr/> <p><b>ability</b> 27:16 43:6 45:10 47:5</p> <p><b>acceleration</b> 157:17,18</p> <p><b>accepted</b> 8:25 160:23</p> <p><b>access</b> 172:18,20</p> <p><b>accommodated</b> 66:23</p> <p><b>accord</b> 89:18</p> <p><b>account</b> 47:2 100:18 102:7</p> <p><b>accountants</b> 134:5</p> <p><b>accounted</b> 110:22</p> <p><b>accounting</b> 37:24 107:19,22 108:2,12 110:8 111:13 117:5, 9,17 125:23 128:4,5 134:2</p> <p><b>accurately</b> 27:24</p> <p><b>acting</b> 40:22 59:10 65:20 73:5 105:7 134:16 138:6 141:10 142:4 144:15 149:7 150:18 159:8,20 161:3,10 162:12</p>
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# **EXHIBIT 14**



1 WATERHOUSE - 10-19-21

2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF TEXAS  
4 DALLAS DIVISION

5 -----  
6 IN RE:

7 Chapter 11  
8 HIGHLAND CAPITAL  
9 MANAGEMENT, L.P., CASE NO.  
10 19-34054-SGI11

11 Debtor.

12 -----  
13 HIGHLAND CAPITAL MANAGEMENT, L.P.,

14 Plaintiff,

15 vs.

16 Adversary  
17 Proceeding No.

18 HIGHLAND CAPITAL MANAGEMENT 21-03000-SGI  
19 FUND ADVISORS, L.P.; NEXPOINT  
20 ADVISORS, L.P.; HIGHLAND  
21 INCOME FUND; NEXPOINT  
22 STRATEGIC OPPORTUNITIES FUND;  
23 NEXPOINT CAPITAL, INC.; and  
24 CLO HOLDCO, LTD.,

25 Defendants.  
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REMOTE VIDEOTAPED DEPOSITION OF

FRANK WATERHOUSE

October 19, 2021

Reported by: Susan S. Klinger, RMR-CRR, CSR

Job No: 201195

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1 WATERHOUSE - 10-19-21  
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 8  
 9 Remote Deposition of FRANK WATERHOUSE,  
 10 held before Susan S. Klinger, a Registered  
 11 Merit Reporter and Certified Realtime Reporter  
 12 of the State of Texas.  
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 18  
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 22  
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 24  
 25

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1 WATERHOUSE - 10-19-21  
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 14 New Orleans, Louisiana 70130  
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 16 Attorneys for Marc Kirschner as the trustee for  
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 18 Deborah Newman, Esq.  
 19 QUINN EMANUEL URQUHART & SULLIVAN  
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 21 New York, New York 10010  
 22  
 23 Also Present:  
 24 Ms. La Asia Canty  
 25

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1 WATERHOUSE - 10-19-21  
 2 A P P E A R A N C E S:  
 3 (All appearances via Zoom.)  
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2 PROCEEDINGS

3 VIDEOGRAPHER: Good morning,

4 Counselors. My name is Scott Hatch. I'm a

5 certified legal videographer in association

6 with TSG Reporting, Inc.

7 Due to the severity of COVID-19 and

8 following the practice of social

9 distancing, I will not be in the same room

10 with the witness. Instead, I will record

11 this videotaped deposition remotely. The

12 reporter, Susan Klinger, also will not be

13 in the same room and will swear the witness

14 remotely.

15 Do all parties stipulate to the

16 validity of this video recording and remote

17 swearing, and that it will be admissible in

18 the courtroom as if it had been taken

19 following Rule 30 of the Federal Rules of

20 Civil Procedures and the state's rules

21 where this case is pending?

22 MR. HORN: Yes.

23 MS. DANDENEAU: Yes.

24 MR. MORRIS: Yes. John Morris. I

25 would just try to do a negative notice

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1 WATERHOUSE - 10-19-21

2 here, as we did yesterday. If anybody has

3 a problem with what was just stated, can

4 you state your objection now?

5 Okay. No response, so everybody

6 accepts the stipulation and the instruction

7 that was just given.

8 VIDEOGRAPHER: Thank you. This is

9 the start of media labeled Number 1 of the

10 video recorded deposition of Frank

11 Waterhouse In Re: Highland Capital

12 Management, L.P., in the United States

13 Bankruptcy Court for the Northern District

14 of Texas, Dallas Division, Case Number

15 21-03000-SGI.

16 This deposition is being held via

17 video conference with participants

18 appearing remotely due to COVID-19

19 restrictions on Tuesday, October 19th, 2021

20 at approximately 9:32 a.m. My name is

21 Scott Hatch, legal video specialist with

22 TSG Reporting, Inc. headquartered at 228

23 East 45th Street, New York, New York. The

24 court reporter is Susan Klinger in

25 association with TSG Reporting.

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1 WATERHOUSE - 10-19-21

2 Counsel, please introduce

3 yourselves.

4 MR. MORRIS: John Morris, Pachulski

5 Stang Ziehl & Jones for the reorganized

6 Highland Capital Management, L.P., the

7 plaintiff in these actions.

8 MS. DANDENEAU: Deborah Dandeneau

9 from Baker McKenzie. My partner, Michelle

10 Hartmann, is also in the room with me,

11 representing Frank Waterhouse individually.

12 MS. DEITSCH-PEREZ: Deborah

13 Deitsch-Perez from Stinson, LLP,

14 representing Jim Dondero, Nancy Dondero,

15 HCRA, and HCMS.

16 MR. HORN: Warren Horn with Heller,

17 Draper & Horn in New Orleans representing

18 Dugaboy Investment Trust.

19 MR. RUKAVINA: Davor Rukavina with

20 Munsch Hardt Kopf & Harr in Dallas

21 representing NexPoint Advisors, LP and

22 Highland Capital Management Fund Advisors,

23 L.P.

24 MR. AIGEN: Michael Aigen from

25 Stinson, and I represent the same parties

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1 WATERHOUSE - 10-19-21  
 2 as Deborah Deitsch-Perez.  
 3 MS. NEWMAN: This is Deborah Newman  
 4 from Quinn Emanuel. We represent the  
 5 litigation – Marc Kirschner as the trustee  
 6 for the litigation SunTrust.  
 7 MR. MORRIS: I think that is  
 8 everybody.  
 9 VIDEOGRAPHER: Thank you. Will the  
 10 court reporter please swear in the witness.  
 11 FRANK WATERHOUSE,  
 12 having been first duly sworn, testified as  
 13 follows:  
 14 EXAMINATION  
 15 BY MR. MORRIS:  
 16 Q. Please state your name for the  
 17 record.  
 18 A. My name is Frank Waterhouse.  
 19 Q. Good morning, Mr. Waterhouse. I'm  
 20 John Morris, as you know, from Pachulski Stang  
 21 Ziehl & Jones. You understand that my firm and  
 22 I represent Highland Capital Management, L.P.;  
 23 is that right?  
 24 A. Yes.  
 25 Q. Okay. And do you understand that

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1 WATERHOUSE - 10-19-21  
 2 to finish your answers before I begin a  
 3 question, but if I fail to do that, will you  
 4 let me know?  
 5 A. I can certainly do that.  
 6 Q. Okay. Do you understand that this  
 7 deposition is being videotaped?  
 8 A. Yes.  
 9 Q. You understand that I may seek to  
 10 use portions of the videotape in a court of  
 11 law?  
 12 A. I did not know that, until you just  
 13 said that.  
 14 Q. Okay. And you are aware of that now  
 15 before the deposition begins substantively; is  
 16 that right?  
 17 A. Yes.  
 18 Q. So unlike I think the other  
 19 depositions that you have given, this one is  
 20 being given remotely. So that presents some  
 21 unique challenges, at least as compared to a  
 22 deposition that is taken in-person.  
 23 From time to time we're going to put  
 24 documents up on the screen, Mr. Waterhouse.  
 25 And it is important that I give you the

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1 WATERHOUSE - 10-19-21  
 2 we're here today for your deposition in your  
 3 individual capacity?  
 4 A. Yes.  
 5 Q. Did you review and – did you  
 6 receive and review a subpoena that Highland  
 7 Capital Management, L.P., served upon you?  
 8 A. Yes.  
 9 Q. You have been deposed before; right?  
 10 A. Yes.  
 11 Q. How many times have you been  
 12 deposed?  
 13 A. About three or four times.  
 14 Q. Okay. And I defended you in one  
 15 deposition; isn't that right?  
 16 A. That is correct.  
 17 Q. So the general ground rules for this  
 18 deposition are largely the same as the  
 19 depositions you have given before. And that is  
 20 I will ask you a series of questions, and it is  
 21 important that you allow me to finish my  
 22 question before you begin your answer; is that  
 23 fair?  
 24 A. Yes.  
 25 Q. And it is important that I allow you

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1 WATERHOUSE - 10-19-21  
 2 opportunity to review any portion of the  
 3 document that you think you need in order to  
 4 fully and completely answer the question.  
 5 So I would ask you to let me know if  
 6 there is a portion of a document that you need  
 7 to see in order to fully and completely answer  
 8 the question. Can you do that for me?  
 9 A. Yes.  
 10 MS. DANDENEAU: Mr. Morris, I would  
 11 just note that we do have hard copies of  
 12 the documents that you sent, so if you can  
 13 just refer to the exhibit number as  
 14 reflected in the documents that you sent,  
 15 Mr. Waterhouse will be able to look at the  
 16 hard copies of those documents.  
 17 MR. MORRIS: I appreciate that,  
 18 and – and I will encourage him to do so.  
 19 There will be other documents that we did  
 20 not send to you that we'll be using today  
 21 though.  
 22 Q. Okay. With that as background, if  
 23 there is anything that I ask you, sir, that you  
 24 don't understand, will you let me know?  
 25 A. Yes.

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Are you currently employed?  
 3 A. Yes.  
 4 Q. By whom?  
 5 A. The Skyview Group.  
 6 Q. When did you become employed by the  
 7 Skyview Group?  
 8 A. I believe March 1st of 2021.  
 9 Q. Do you have a title at Skyview?  
 10 A. Yes.  
 11 Q. What is your title?  
 12 A. My title is chief financial officer.  
 13 Q. Do you report to anybody in your  
 14 role as CFO?  
 15 A. I don't, no.  
 16 Q. No. Is there a president or a CEO  
 17 of Skyview?  
 18 A. Yes.  
 19 Q. Who is that?  
 20 A. That is Scott Ellington.  
 21 Q. But you don't report to  
 22 Mr. Ellington; is that right?  
 23 A. I don't think so.  
 24 Q. Does Skyview Group –  
 25 MS. DANDENEAU: Excuse me, we –

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1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. Is it more than 30?  
 4 A. I don't know.  
 5 Q. Can you tell me what portion of  
 6 Skyview – Skyview's revenue is derived from  
 7 entities that are directly or indirectly owned  
 8 or controlled by Jim Dondero?  
 9 MS. DANDENEAU: Mr. Morris, I mean,  
 10 you called Mr. Waterhouse here individually  
 11 for purposes of his testimony in connection  
 12 with the noticed litigation. I have given  
 13 you some leeway to ask him some background  
 14 information about Skyview Group, but this  
 15 is not a substitute for a deposition in  
 16 connection with any other pending disputes  
 17 that exist. And – and we agreed to accept  
 18 the subpoena on the basis of he – this is  
 19 testimony that he is giving in connection  
 20 with the noticed litigation.  
 21 I really think that you are now  
 22 going a little bit far afield from the  
 23 purpose of this deposition.  
 24 MR. MORRIS: Okay. It is – I'm not  
 25 intending to use these – the answers to

Page 15

1 WATERHOUSE - 10-19-21  
 2 A. I – I – I might. I just – I  
 3 don't recall.  
 4 Q. Okay. Does Skyview Group provide  
 5 any services to any entity directly or  
 6 indirectly owned or controlled by Jim Dondero?  
 7 A. Yes.  
 8 Q. Can you name – is that pursuant to  
 9 written contracts?  
 10 A. Yes.  
 11 Q. And do you know how many contracts  
 12 exist?  
 13 A. Approximately six or so.  
 14 Q. And is the Skyview Group made up of  
 15 individuals who were formerly employees of  
 16 Highland Capital Management, L.P.?  
 17 A. No.  
 18 Q. Do you know how many – how many –  
 19 how many employees does Skyview have?  
 20 A. Approximately 35.  
 21 Q. And can you tell me how many of  
 22 those 35 are former officers, directors, or  
 23 employees of Highland Capital Management, L.P.?  
 24 A. I don't know the exact number.  
 25 Q. Is it more than 20?

Page 17

1 WATERHOUSE - 10-19-21  
 2 these questions for any purpose other than  
 3 this litigation. I think you understand  
 4 fully why I'm asking the questions, and I  
 5 just have a couple more, if you will bear  
 6 with me.  
 7 MS. DANDENEAU: Okay.  
 8 MS. DEITSCH-PEREZ: Can we have an  
 9 agreement that an objection by one is an  
 10 objection for any other party here?  
 11 MR. MORRIS: Sure. I would – I  
 12 would encourage that, sure.  
 13 MS. DEITSCH-PEREZ: Thank you.  
 14 MR. MORRIS: It can't be sustained  
 15 or overruled more than one time, so...  
 16 Q. Mr. Waterhouse, can you answer my  
 17 question, please.  
 18 MS. DANDENEAU: Do you want to  
 19 repeat it, Mr. Morris, for his benefit?  
 20 MR. MORRIS: Sure.  
 21 Q. Can you – can you tell me the  
 22 approximate portion of Skyview's revenue that  
 23 is derived from entities that are directly or  
 24 indirectly owned or controlled by Mr. Dondero?  
 25 A. I don't know the exact number.

Page 18

1 WATERHOUSE - 10-19-21  
 2 Q. Is it more than 75 percent?  
 3 A. Yes.  
 4 Q. Is it more than 90 percent?  
 5 A. I don't know.  
 6 Q. Okay. Can I refer to Highland  
 7 Capital Management, L.P., as Highland?  
 8 A. Yes.  
 9 Q. All right. And you previously  
 10 served as Highland's CFO; correct?  
 11 A. Yes.  
 12 Q. When did you join Highland?  
 13 A. I don't recall the exact date.  
 14 Q. Can you tell me what year?  
 15 A. 2006.  
 16 Q. When did you -- in what year did you  
 17 become Highland's CFO?  
 18 A. I don't recall the exact date.  
 19 Q. I'm not asking you for the exact  
 20 date. I'm asking you if you recall the year in  
 21 which you were appointed CFO.  
 22 A. I don't recall the exact year.  
 23 Q. Can you tell me which years it is  
 24 possible that you were appointed to CFO of  
 25 Highland?

Page 20

1 WATERHOUSE - 10-19-21  
 2 from at least 2014 until the time you left  
 3 Highland?  
 4 MS. DANDENEAU: Objection to form.  
 5 A. I don't want to speculate the exact  
 6 or what year that changed or -- so I would like  
 7 to stick with my testimony.  
 8 Q. Can you recall when you began  
 9 reporting to Mr. Dondero?  
 10 A. I don't recall.  
 11 Q. Can you -- can you give me an  
 12 estimate of what year you think you might have  
 13 began reporting to Mr. Dondero?  
 14 A. I will go back to my prior  
 15 testimony.  
 16 Q. Okay. There is no -- you have no  
 17 ability to tell me when you began reporting to  
 18 Mr. Dondero.  
 19 Do I have that right?  
 20 MS. DANDENEAU: Objection to form.  
 21 A. I don't recall.  
 22 Q. Okay. Do you recall who you might  
 23 have reported to before you began reporting to  
 24 Mr. Dondero?  
 25 A. Yes.

Page 19

1 WATERHOUSE - 10-19-21  
 2 A. 2011 or 2012.  
 3 Q. Did you serve as Highland's CFO on a  
 4 continuous basis from in or around 2011 or 2012  
 5 until early 2021?  
 6 A. Yes.  
 7 Q. During that entire time you reported  
 8 directly to Jim Dondero; correct?  
 9 A. I -- I don't know.  
 10 Q. Is there anybody else you reported  
 11 to -- withdrawn.  
 12 Did you report to Mr. Dondero for  
 13 some portion of the time that you served as  
 14 CFO?  
 15 A. Yes.  
 16 Q. Is there a portion of time that you  
 17 don't recall who you reported to?  
 18 A. Yes.  
 19 Q. What portion of time do you have in  
 20 your mind when you can't recall who you  
 21 reported to?  
 22 A. From the 2011 to -- for  
 23 approximately a year or two.  
 24 Q. Okay. So is it fair to say that you  
 25 reported to Mr. Dondero in your capacity as CFO

Page 21

1 WATERHOUSE - 10-19-21  
 2 Q. Who might you have reported to in  
 3 your capacity as CFO before you started  
 4 reporting to Mr. Dondero?  
 5 A. That would have been Patrick Boyce.  
 6 Q. Are you aware that Highland filed  
 7 for bankruptcy on October 19th, 2019?  
 8 A. Yes.  
 9 Q. And we refer to that as the petition  
 10 date?  
 11 A. Yes.  
 12 Q. Okay. Do you hold any professional  
 13 licenses, sir?  
 14 A. Yes.  
 15 Q. Can you tell me what professional  
 16 licenses you hold?  
 17 A. I'm a certified public accountant.  
 18 Q. Okay. Anything else?  
 19 A. No.  
 20 Q. Do you have any other professional  
 21 licenses or certificates?  
 22 A. When you say "professional license,"  
 23 that is not education?  
 24 Q. Tell me -- sure. Anything other  
 25 than a driver's license.

Page 22

1 WATERHOUSE - 10-19-21  
 2 Do you have any other license or  
 3 certificate or certification?  
 4 A. Are you asking, like, where I went  
 5 to school and the –  
 6 Q. I am not. I am not. I didn't say  
 7 education. I didn't ask about degrees.  
 8 Do you know what a license is?  
 9 A. Well, yeah, I mean, a license is  
 10 something you get after you receive a certain  
 11 level of proficiency.  
 12 Q. Do you have any licenses or  
 13 certifications other than your CPA?  
 14 MS. DANDENEAU: Objection, form.  
 15 I assume you mean professional  
 16 licenses, Mr. Morris; correct?  
 17 Q. Can you answer my question, sir?  
 18 A. Mr. Morris, I'm thinking. I  
 19 don't – I don't think I have any others.  
 20 Q. Are you familiar with an entity  
 21 called Highland Capital Management Fund  
 22 Advisors?  
 23 A. Yes.  
 24 Q. Were you ever – can we refer to  
 25 that entity as HCMFA?

Page 24

1 WATERHOUSE - 10-19-21  
 2 treasurer and acting treasurer?  
 3 A. I said "acting treasurer" as I am an  
 4 employee of Skyview, as you previously  
 5 stated – or asked.  
 6 Q. But you are the treasurer of HCMFA  
 7 today; correct?  
 8 A. I am – I am the acting treasurer  
 9 for HCMFA.  
 10 Q. How did you become the treasurer of  
 11 HCMFA?  
 12 A. Are you asking how I became the  
 13 treasurer of HCMFA today?  
 14 Q. How did you become appointed to  
 15 serve as the treasurer of HCMFA?  
 16 A. Well, in – in – in what time  
 17 capacity?  
 18 Q. The first time that you were  
 19 appointed.  
 20 A. First time. I believe I was asked  
 21 to serve as treasurer for HCMFA the first time.  
 22 Q. By who? Who asked you to do that?  
 23 A. I don't recall.  
 24 Q. Is there anything that would refresh  
 25 your recollection as to who appointed you as

Page 23

1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. Were you ever employed by HCMFA?  
 4 A. Not that I recall.  
 5 Q. Were you ever – did you ever hold  
 6 the title of an officer or director of HCMFA?  
 7 A. Yes.  
 8 Q. What title did you hold?  
 9 A. Treasurer.  
 10 Q. When did you become the treasurer of  
 11 HCMFA?  
 12 A. I don't recall.  
 13 Q. Can you tell me the year?  
 14 A. I don't – I don't know the year.  
 15 Q. Can you approximate the year in  
 16 which you became the treasurer of HCMFA?  
 17 A. I don't know.  
 18 Q. Can you tell me if it was before or  
 19 after 2016?  
 20 A. I don't recall.  
 21 Q. Are you still the – do you know if  
 22 you're still the treasurer of HCMFA today?  
 23 A. Today, I am the acting treasurer for  
 24 HCMFA.  
 25 Q. Is there a distinction between

Page 25

1 WATERHOUSE - 10-19-21  
 2 the treasurer of CF- – HCMFA for the first  
 3 time?  
 4 A. I don't – I mean, there would be  
 5 some documents, some legal documents. I don't  
 6 know where those are.  
 7 Q. How many times have you been  
 8 appointed the treasurer of HCMFA?  
 9 A. I don't know.  
 10 Q. Was it more than once?  
 11 A. I don't know.  
 12 Q. Can you tell me any period of time  
 13 since 2016 that you did not hold the title of  
 14 treasurer of HCMFA?  
 15 MS. DANDENEAU: Objection to form.  
 16 A. I don't recall.  
 17 Q. What are your duties and  
 18 responsibilities as the treasurer of HCMFA?  
 19 A. My duties are to do the best job  
 20 that I can as the – as an accountant and  
 21 finance guy.  
 22 Q. What specific duties and  
 23 responsibilities do you have as the treasurer  
 24 of HCMFA?  
 25 A. My duties are to do the best job

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1 WATERHOUSE - 10-19-21  
 2 that I can as the accounting and finance person  
 3 for HCMFA.  
 4 Q. As the accounting and finance person  
 5 for HCMFA, do you have any particular areas of  
 6 responsibility?  
 7 A. Yeah, it is to manage the accounting  
 8 and finance function for HCMFA.  
 9 Q. Would that include -- do you have  
 10 responsibility for overseeing HCMFA's annual  
 11 audit?  
 12 A. Can I please elaborate on my prior  
 13 question?  
 14 Q. Of course. You -- you are giving  
 15 answers. I'm asking questions.  
 16 A. Okay. Yes, so the -- it -- like I  
 17 said, it is to manage the accounting finance  
 18 aspect, but I am, as we discussed, the  
 19 treasurer. That is -- being treasurer is what  
 20 gives me that -- that management function.  
 21 Q. Does anybody report to you in your  
 22 capacity as treasurer of HCMFA?  
 23 A. I don't believe so.  
 24 Q. Does HCMFA have a chief financial  
 25 officer?

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1 WATERHOUSE - 10-19-21  
 2 A. I don't know.  
 3 Q. Are you still the treasurer of  
 4 NexPoint today?  
 5 A. I am the acting treasurer for  
 6 NexPoint.  
 7 Q. When did your title change from  
 8 treasurer to acting treasurer?  
 9 A. I don't know.  
 10 Q. Did your duties and responsibilities  
 11 change at all when your title was changed from  
 12 treasurer to acting treasurer?  
 13 A. I don't -- I don't believe so.  
 14 Q. Why did --  
 15 A. I still manage the finance and  
 16 accounting function for NexPoint.  
 17 Q. Why did your title change from  
 18 treasurer to acting treasurer?  
 19 A. I don't -- I'm using the term  
 20 "acting treasurer" as I'm a Skyview employee.  
 21 I don't -- I don't know -- again, I am a -- as  
 22 I am the Skyview employee.  
 23 Q. Okay.  
 24 A. And we -- we provide officer  
 25 services.

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1 WATERHOUSE - 10-19-21  
 2 A. I don't -- I don't know.  
 3 Q. You don't know?  
 4 You're the treasurer of HCMFA but  
 5 you don't know if HCMFA has a chief financial  
 6 officer.  
 7 Do I have that right?  
 8 A. That's right.  
 9 Q. Okay. Have you heard of a company  
 10 called NexPoint Advisors?  
 11 A. Yes.  
 12 Q. We will refer to that as NexPoint.  
 13 Okay?  
 14 A. Okay.  
 15 Q. Were you ever employed by NexPoint?  
 16 A. I don't recall.  
 17 Q. Did you ever hold any title with  
 18 respect to the entity known as NexPoint?  
 19 A. Yes.  
 20 Q. What titles have you held in  
 21 relation to NexPoint?  
 22 A. Treasurer. I think it was only  
 23 treasurer.  
 24 Q. Can you tell me the approximate year  
 25 you became the treasurer of NexPoint?

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1 WATERHOUSE - 10-19-21  
 2 Q. And you serve as an officer of  
 3 HCMFA; correct?  
 4 A. I think we went over that with my  
 5 testimony. Yes, I'm the acting treasurer for  
 6 HCMFA.  
 7 Q. And you are an officer of NexPoint;  
 8 correct?  
 9 A. I think -- I am the acting treasurer  
 10 for NexPoint Advisors.  
 11 Q. And -- and who appointed you acting  
 12 treasurer of NexPoint Advisors?  
 13 A. I don't recall specifically.  
 14 Q. Do you have any recollection of who  
 15 might have appointed you the treasurer of  
 16 NexPoint?  
 17 A. I mean, it -- it -- I don't recall  
 18 exactly who it was.  
 19 Q. Who were the possibilities?  
 20 MS. DEITSCH-PEREZ: Object to the  
 21 form.  
 22 Q. You can answer.  
 23 A. Someone in the legal group for  
 24 NexPoint. The other officers as well.  
 25 Q. Have you heard of a company called



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1 WATERHOUSE - 10-19-21  
 2 Highland Capital Management Services, Inc.?  
 3 A. Yes.  
 4 Q. We will refer to that as HCMS.  
 5 Okay?  
 6 A. HCMS. Okay.  
 7 Q. Were you ever employed by HCMS?  
 8 A. No.  
 9 Q. Have you ever held any titles in  
 10 relation to HCMF – I apologize – HCMS?  
 11 A. Yes.  
 12 Q. What titles have you held in  
 13 relation to HCMS?  
 14 A. Treasurer and acting treasurer.  
 15 Q. When did you first become treasurer  
 16 or acting treasurer of HCMS?  
 17 A. I don't recall the exact dates.  
 18 Q. Can you recall – can you  
 19 approximate the year that you became the  
 20 treasurer of HCMS?  
 21 A. I don't – I don't know.  
 22 Q. Are you still the treasurer of HCMS  
 23 today?  
 24 A. I am the acting treasurer for HCMS.  
 25 Q. And are your duties and

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1 WATERHOUSE - 10-19-21  
 2 the witness knows.  
 3 Q. You're familiar with an entity  
 4 called HCRE Partners, LLC; correct?  
 5 A. Yes.  
 6 Q. Okay. So that is the entity that we  
 7 will refer to as HCRE. If you're aware of any  
 8 successor, that is great. If not, let's just  
 9 define it as such.  
 10 Have you ever been employed by HCRE  
 11 or any entity that you know to have succeeded  
 12 HCRE?  
 13 A. No.  
 14 Q. Did you ever serve as an officer or  
 15 director of HCRE or any successor?  
 16 A. Not that I recall.  
 17 Q. Okay. Can we refer to NexPoint and  
 18 HCMFA as the advisors?  
 19 A. Yes.  
 20 Q. In general, the advisors provided  
 21 investment advisory services to certain retail  
 22 funds; correct?  
 23 A. Yes.  
 24 Q. And we will refer to the retail  
 25 funds that are served by the advisors

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1 WATERHOUSE - 10-19-21  
 2 responsibilities as the acting treasurer for  
 3 HCMS and the acting treasurer for NexPoint the  
 4 same as your duties and responsibilities in  
 5 your role as the acting treasurer of HCMFA?  
 6 A. More or less.  
 7 Q. Have you ever heard of a company  
 8 called HCRE Partners, LLC?  
 9 A. Yes.  
 10 Q. And do you understand that that  
 11 entity is now known today as NexPoint Real  
 12 Estate Partners?  
 13 A. I did not know that.  
 14 Q. All right. Can we refer to HCRE  
 15 Partners as HCRE?  
 16 MS. DANDENEAU: Objection to form.  
 17 Did you mean NexPoint Real Estate  
 18 Partners, Mr. Morris?  
 19 MR. MORRIS: No.  
 20 MS. DANDENEAU: Oh.  
 21 MR. MORRIS: He said he wasn't  
 22 familiar that it was succeeded by that  
 23 entity. So --  
 24 MS. DANDENEAU: Okay.  
 25 MR. MORRIS: -- let's go with what

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1 WATERHOUSE - 10-19-21  
 2 collectively as the retail funds; is that okay?  
 3 A. Okay.  
 4 Q. Each of the retail funds is governed  
 5 by a board; correct?  
 6 A. Yes.  
 7 Q. And do you know the people who serve  
 8 on the boards of the retail funds?  
 9 MS. DANDENEAU: Objection to form.  
 10 A. I don't know all of them.  
 11 Q. Do you know whether the same people  
 12 serve on the board of each of the retail funds  
 13 as we've defined that term?  
 14 A. Which -- so when you say "retail  
 15 funds" -- again, I want to be -- what retail  
 16 funds are you referring to, because there are  
 17 -- there are several distinctions?  
 18 What retail funds are you using when  
 19 you refer to them?  
 20 Q. That is why -- that is why I tried  
 21 to define the terms. So let me do it again.  
 22 Retail funds for the purposes of  
 23 this deposition means any retail fund to which  
 24 either of the advisors provides advisory  
 25 services. Okay?

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1 WATERHOUSE - 10-19-21  
 2 A. Okay.  
 3 Q. Okay. So do you know whether the  
 4 same people serve on the board of each of the  
 5 retail funds?  
 6 A. I don't know.  
 7 Q. Were you ever employed by any of the  
 8 retail funds?  
 9 A. No.  
 10 Q. No?  
 11 A. No.  
 12 Q. Okay. Do you have any title with  
 13 respect to any of the retail funds?  
 14 A. Yes.  
 15 Q. What titles do you hold –  
 16 withdrawn.  
 17 Do you have the same titles with  
 18 respect to all of the retail funds or do  
 19 they – or just something else?  
 20 MS. DANDENEAU: Objection to form.  
 21 Q. Withdrawn.  
 22 Do you have the same title with  
 23 respect to each of the retail funds?  
 24 A. No.  
 25 Q. Tell me which title you have with

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1 WATERHOUSE - 10-19-21  
 2 witness' camera.  
 3 Do you want to go off the record and  
 4 make some adjustments?  
 5 MR. MORRIS: Sure, but just for this  
 6 purpose. I don't want to take a break. We  
 7 just started.  
 8 MS. DANDENEAU: Yeah, that is fine.  
 9 That is fine. We're going to put you on  
 10 mute.  
 11 MR. MORRIS: All right.  
 12 MS. DANDENEAU: I'm going to try to  
 13 open up some of the shades.  
 14 VIDEOGRAPHER: We're going off the  
 15 record at 10:08 a.m.  
 16 (Recess taken 10:08 a.m. to 10:11 a.m.)  
 17 VIDEOGRAPHER: We are back on the  
 18 record at 10:11 a.m.  
 19 Q. Mr. Waterhouse, when did you become  
 20 the principal executive officer of the four  
 21 retail funds that you just identified?  
 22 A. I don't recall.  
 23 Q. Do you recall the approximate year  
 24 that you became the principal executive officer  
 25 of the four funds?

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1 WATERHOUSE - 10-19-21  
 2 respect to each retail fund.  
 3 Actually, let's do it a different  
 4 way. I withdraw the question.  
 5 Can you give me one title you have  
 6 in relation to any retail fund?  
 7 A. Yes.  
 8 Q. What title – what title can you  
 9 give me?  
 10 A. Principal executive officer.  
 11 Q. Do you serve as principal executive  
 12 officer for each of the retail funds?  
 13 A. No.  
 14 Q. Can you identify for me the retail  
 15 funds in which you serve as the principal  
 16 executive officer?  
 17 A. Yes. Highland Funds 1, Highland  
 18 Funds 2, Highland Income Fund, Highland Global  
 19 Allocation Fund.  
 20 Q. I'm sorry, you said "Global  
 21 Allocation Fund"?  
 22 A. Yes.  
 23 VIDEOGRAPHER: Excuse me,  
 24 Mr. Morris. This is the videographer. I'm  
 25 concerned about the lighting in the

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1 WATERHOUSE - 10-19-21  
 2 A. 2021.  
 3 Q. Did you ever hold any title with  
 4 respect to any of the four funds you have just  
 5 identified other than principal executive  
 6 officer?  
 7 A. I don't recall.  
 8 Q. Is it possible that you held a  
 9 position or a title with the four funds you  
 10 just identified prior to 2021?  
 11 A. Yes.  
 12 Q. But you don't recall if you did or  
 13 not; do I have that right?  
 14 A. No. You – I thought you asked, did  
 15 I hold other titles.  
 16 Q. Did you hold any title at the four  
 17 retail funds for which you now serve as  
 18 principal executive officer at any time prior  
 19 to 2021?  
 20 A. Yes.  
 21 Q. What titles did you hold?  
 22 A. I don't recall all the titles.  
 23 Q. Do you recall any of the titles?  
 24 A. Yes.  
 25 Q. What titles do you recall holding at

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1 WATERHOUSE - 10-19-21  
 2 those four retail funds before 2021?  
 3 A. Principal executive officer.  
 4 Q. Were you the principal executive  
 5 officer of the four retail funds that you have  
 6 identified?  
 7 A. Sorry, could you repeat the  
 8 question?  
 9 Q. Were you the principal executive  
 10 officer for each of the four retail funds that  
 11 you have identified?  
 12 A. Yes.  
 13 Q. When did you become the principal  
 14 executive – withdrawn.  
 15 Can you give me the approximate year  
 16 that you became the principal executive officer  
 17 for each of the four retail funds you've  
 18 identified?  
 19 A. I don't recall.  
 20 Q. What are your duties and  
 21 responsibilities as the principal executive  
 22 officer of these four retail funds?  
 23 A. It is to manage the finance and  
 24 accounting positions.  
 25 Q. So at the same time you serve as the

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1 WATERHOUSE - 10-19-21  
 2 A. I don't recall during my tenure of  
 3 Highland or my – as CFO of Highland – yeah,  
 4 if there are any loans as CFO of Highland.  
 5 Q. I'm just talking about officers and  
 6 employees right now. You have no recollection  
 7 of Highland ever making a loan to any of its  
 8 officers or employees during the time that you  
 9 served as CFO. Do I have that right?  
 10 MS. DANDENEAU: Objection to form.  
 11 A. So I thought you were saying  
 12 officers and employees as CFO, right, so there  
 13 were – I mean, okay, yes.  
 14 Q. I would ask you to listen carefully  
 15 to my question. If I – if I'm not clear, let  
 16 me know, but I'm really trying to be as clear  
 17 as I can.  
 18 A. I'm listening as carefully as I can,  
 19 and you are asking very specific questions in a  
 20 timeline. And I'm trying to answer your  
 21 questions as specifically as I can, and I  
 22 apologize if – if I'm going back. I am – you  
 23 are asking very specific questions. Thank you.  
 24 Q. During the period that you served as  
 25 Highland's CFO, from time to time Highland

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1 WATERHOUSE - 10-19-21  
 2 treasurer of the advisors, you also serve as  
 3 the principal executive officer of these four  
 4 retail funds; correct?  
 5 A. Yes.  
 6 Q. Did you ever hold any title with  
 7 respect to any other retail fund?  
 8 A. Not that I recall.  
 9 Q. During the period that you served as  
 10 Highland's CFO, from time to time Highland  
 11 loaned money to certain of its officers and  
 12 employees; correct?  
 13 A. Yes.  
 14 Q. During the period that you served as  
 15 Highland's CFO, from time to time Highland  
 16 loaned money to certain –  
 17 A. Let me – let me retract that,  
 18 sorry, that – you asked during the time I was  
 19 CFO, Highland loaned moneys to employees. I  
 20 don't – I don't recall that during my tenure  
 21 of CFO.  
 22 Q. You have no recollection during the  
 23 time that you were the CFO of Highland of  
 24 Highland ever loaning any money to any officer  
 25 or director of Highland?

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1 WATERHOUSE - 10-19-21  
 2 loaned money to certain corporate affiliates;  
 3 correct?  
 4 MS. DANDENEAU: Objection to form.  
 5 A. What are corporate affiliates?  
 6 Q. How about the ones that are in  
 7 Highland's audited financial statements under  
 8 the section entitled Loans to Affiliates. Why  
 9 don't we start with those. Do you have any  
 10 understanding of what the phrase "affiliates"  
 11 means?  
 12 MS. DANDENEAU: Objection to form.  
 13 A. I understand what affiliates are,  
 14 yet affiliates can have different meanings in  
 15 different contexts, so...  
 16 Q. Why don't you – why don't you tell  
 17 me what your understanding of the term  
 18 "affiliate" is in relation to Highland Capital  
 19 Management, L.P.  
 20 A. Is that a – it depends on the  
 21 context.  
 22 Q. How about the context of making  
 23 loans?  
 24 MS. DANDENEAU: Objection to form.  
 25 A. I didn't make the determination of

<p style="text-align: right;">Page 42</p> <p>1 WATERHOUSE - 10-19-21                  2 who an affiliate was or is at the time those –                  3 I didn't – that wasn't my job to make a                  4 determination of who an affiliate is.                  5 Q. All right. So as the CFO of                  6 Highland, do you have any ability right now to                  7 tell me which companies that were directly or                  8 indirectly owned and/or controlled by                  9 Mr. Dondero in whole or in part received loans                  10 from Highland Capital Management, L.P.?                  11 MS. DANDENEAU: Objection to form.                  12 MS. DEITSCH-PEREZ: Objection, form.                  13 A. Yes.                  14 Q. Okay. Identify every entity that                  15 you can think of that was directly or                  16 indirectly owned and/or controlled by                  17 Mr. Dondero in whole or in part that received a                  18 loan from Highland Capital Management, L.P.                  19 MR. RUKAVINA: Objection, legal                  20 conclusion.                  21 A. NexPoint Advisors, Highland Capital                  22 Management Fund Advisors, HCM Services,                  23 Dugaboy. Sorry, I don't think – Dugaboy                  24 doesn't fit that definition. You said owned                  25 and controlled. I don't think that that</p>	<p style="text-align: right;">Page 43</p> <p>1 WATERHOUSE - 10-19-21                  2 definition –                  3 Q. I said owned and/or controlled.                  4 A. I don't – again, I'm not – I'm not                  5 the legal expert. I don't think it controls –                  6 he controls Dugaboy, so again, I'm not the                  7 legal person.                  8 Q. I'm not asking you for a legal                  9 conclusion, sir. I'm asking you for your                  10 knowledge, okay, as the CFO – the former CFO                  11 of Highland Capital Management, other than                  12 NexPoint, HCMFA, and HCMF – HCMS, can you                  13 think of any other entities that were owned                  14 and/or controlled directly or indirectly in                  15 whole or in part by Jim Dondero who received a                  16 loan from Highland Capital Management, L.P.?                  17 MS. DANDENEAU: Objection to form.                  18 A. HCRE.                  19 Q. Any others?                  20 A. That is – that is all I can think                  21 of.                  22 Q. And you're aware that from time to                  23 time while you were the CFO, Highland loaned                  24 money to Jim Dondero; correct?                  25 A. Yes.</p>
<p style="text-align: right;">Page 44</p> <p>1 WATERHOUSE - 10-19-21                  2 Q. Okay. Can we refer to the four                  3 entities that you just named and Mr. Dondero as                  4 the affiliates?                  5 A. So that would be Jim Dondero,                  6 NexPoint Advisors, Highland Capital Management                  7 Fund Advisors, and HCRE.                  8 Q. And HCMS?                  9 A. And HCMS, okay.                  10 Q. And can we refer to the loans that                  11 were given to each of those affiliates as the                  12 affiliate loans?                  13 A. Yes.                  14 Q. And is it fair to say that each of                  15 the affiliates were the borrowers under the                  16 affiliate loans as we're defining the term?                  17 MR. RUKAVINA: Objection, legal                  18 conclusion.                  19 A. The borrowers are whoever were on                  20 the notes. I don't – I don't know. I'm not                  21 the legal person.                  22 Q. But you –                  23 A. I don't know.                  24 Q. You do know, as Highland's former                  25 CFO, that each of the affiliates that you have</p>	<p style="text-align: right;">Page 45</p> <p>1 WATERHOUSE - 10-19-21                  2 identified tendered notes to Highland; correct?                  3 MR. RUKAVINA: Hey, John, will you                  4 just give me a running objection to legal                  5 conclusion to HCM –                  6 MR. MORRIS: No. No, if you want to                  7 object –                  8 MR. RUKAVINA: I will object every                  9 time. Object to legal conclusion.                  10 MR. MORRIS: That is fine.                  11 A. Sorry, can you repeat the question?                  12 Q. Are you aware that each of the –                  13 that each of the affiliates, as we have defined                  14 the term, gave to Highland a promissory note in                  15 exchange for the loans?                  16 MR. RUKAVINA: Objection to the                  17 extent that calls for a legal conclusion.                  18 A. I don't.                  19 Q. No, you don't know that?                  20 A. No, they didn't – you said they                  21 exchanged a promissory note for a loan. I                  22 don't – I don't understand that question, so I                  23 said no.                  24 Q. At the time of the bankruptcy                  25 filing, did Highland have in its possession</p>

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1 WATERHOUSE - 10-19-21  
 2 promissory notes that were signed by each of  
 3 the affiliates?  
 4 A. Yes.  
 5 Q. To the best of your knowledge,  
 6 during the time that you served as Highland's  
 7 CFO, did Highland disclose to its outside  
 8 auditors all of the loans that were made to  
 9 affiliates?  
 10 MR. RUKAVINA: Objection, that calls  
 11 for a legal conclusion.  
 12 MS. DEITSCH-PEREZ: I also couldn't  
 13 hear you, John, because there was some  
 14 garbling on -- on the -- on the call.  
 15 MR. MORRIS: Folks, I've got to tell  
 16 you this is not going well, and I'm  
 17 reserving my right --  
 18 MS. DANDENEAU: John, it was just  
 19 the end of that question. It was just the  
 20 end of that question. I couldn't hear it  
 21 either. Sorry, if you could repeat it,  
 22 please.  
 23 MR. MORRIS: That is less than an  
 24 hour into this, but folks are trying to run  
 25 out the clock, and so I'm just going to

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1 WATERHOUSE - 10-19-21  
 2 financial statements?  
 3 MR. RUKAVINA: Objection, legal  
 4 conclusion.  
 5 A. When an audit was performed, any  
 6 loans that were made by Highland to the  
 7 affiliates were disclosed to auditors.  
 8 Q. Are you aware of any loan that was  
 9 made to any affiliate that was not disclosed to  
 10 the auditors?  
 11 A. I'm not aware.  
 12 Q. To the best of your knowledge, did  
 13 each of the affiliates who were --  
 14 (inaudible) -- loaned from Highland execute a  
 15 promissory note in connection with that loan?  
 16 MR. RUKAVINA: Objection, legal  
 17 conclusion.  
 18 A. Sorry, you -- halfway through the  
 19 question it got muffled.  
 20 Can you repeat that again?  
 21 Q. To the best of your knowledge, did  
 22 every affiliate execute a promissory note in  
 23 connection with each loan that it obtained from  
 24 Highland?  
 25 MR. RUKAVINA: Objection, legal

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1 WATERHOUSE - 10-19-21  
 2 state that now.  
 3 MS. DANDENEAU: You know, and,  
 4 Mr. Morris, I really object to that. I  
 5 mean --  
 6 MR. MORRIS: Okay.  
 7 MS. DANDENEAU: -- Mr. Waterhouse  
 8 just told you he's trying to listen to your  
 9 questions and answer them carefully, and  
 10 you have no basis for saying that.  
 11 MR. MORRIS: Okay.  
 12 MS. DANDENEAU: This does not --  
 13 this is not an experienced witness, so he's  
 14 trying to do the best he can.  
 15 Q. Mr. Waterhouse, during the time that  
 16 you served as Highland's CFO, did Highland  
 17 disclose to its outside auditors all of the  
 18 loans that it made to each of the affiliates  
 19 that you have identified?  
 20 MR. RUKAVINA: Objection, legal  
 21 conclusion.  
 22 A. Yes.  
 23 Q. To the best of your knowledge, while  
 24 you were Highland's CFO, were all of the  
 25 affiliate loans described in Highland's audited

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1 WATERHOUSE - 10-19-21  
 2 conclusion.  
 3 A. Yes.  
 4 Q. You are not aware of any loan that  
 5 any affiliate ever obtained from Highland where  
 6 the affiliate did not give a promissory note in  
 7 return; is that fair?  
 8 A. Yes, I'm not aware.  
 9 Q. And to the best of your knowledge,  
 10 did Highland loan to each affiliate an amount  
 11 of money equal to the principal amount of each  
 12 promissory note?  
 13 MR. RUKAVINA: Objection, legal  
 14 conclusion.  
 15 A. Yes.  
 16 Q. During the time that you served as  
 17 CFO, did Highland ever loan money to  
 18 Mark Okada?  
 19 A. I -- I don't recall.  
 20 Q. Did you ever see any promissory  
 21 notes executed by Mark Okada?  
 22 A. I don't recall.  
 23 Q. Do you know if Highland ever forgave  
 24 any loan that it ever made to Mr. Okada?  
 25 A. I don't recall.

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1 WATERHOUSE - 10-19-21  
 2 Q. Do you recall if Mr. Okada paid back  
 3 all principal and interest due and owing under  
 4 any loan he obtained from Highland?  
 5 MS. DEITSCH-PEREZ: Objection to  
 6 form.  
 7 MS. DANDENEAU: Objection to form.  
 8 A. I don't recall.  
 9 Q. Do you recall whether – during your  
 10 time as CFO, whether Highland ever loaned money  
 11 to Jim Dondero?  
 12 A. Yes.  
 13 Q. To the best of your knowledge, did  
 14 Mr. Dondero sign and deliver to Highland a  
 15 promissory note in connection with each loan  
 16 that he obtained from Highland?  
 17 A. If you are referring to the  
 18 promissory notes that, you know, part of  
 19 Highland's records, yes.  
 20 Q. Okay. You're not aware of any loan  
 21 that Mr. Dondero took from Highland that wasn't  
 22 backed up by – by a promissory note with a  
 23 face – with a principal amount equal to the  
 24 amount of the loan; correct?  
 25 A. Am I aware that Jim Dondero took a

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. And so I appreciate the  
 3 distinction.  
 4 Is it fair to say that, to the best  
 5 of your knowledge, Highland did not forgive a  
 6 loan that it made to an officer or employee  
 7 after 2013?  
 8 MS. DANDENEAU: Objection to form.  
 9 A. I don't recall.  
 10 Q. To the best of your knowledge, did  
 11 Highland disclose to its auditors every  
 12 instance where it forgave, in whole or in part,  
 13 a loan that it had made to one of its officers  
 14 or employees?  
 15 A. No.  
 16 Q. Can you think of – can you – can  
 17 you identify any loan to an officer or employee  
 18 that was forgiven by Highland, in whole or in  
 19 part, that was not disclosed to Highland's  
 20 outside auditors?  
 21 A. Look, I don't recall all of the  
 22 loans and the loan forgiveness. I just know as  
 23 part of the audit process there is a  
 24 materiality concept.  
 25 So if there were loans to employees

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1 WATERHOUSE - 10-19-21  
 2 loan?  
 3 Q. Without giving a – let me ask a  
 4 better question. I'm sorry, Mr. Waterhouse.  
 5 Are you aware of any loan that  
 6 Mr. Dondero obtained from Highland where he  
 7 didn't give a promissory note in return?  
 8 A. I'm not aware.  
 9 Q. During the time that you served as  
 10 Highland's CFO, did Highland ever forgive any  
 11 loans, in whole or in part, that it made to  
 12 Mr. Dondero?  
 13 A. Not that I'm aware.  
 14 Q. At the time that you served as  
 15 Highland's CFO, did Highland ever forgive any  
 16 loan, in whole or in part, that it made to any  
 17 affiliate as we've defined the term today?  
 18 A. Not that I'm aware.  
 19 Q. During the time that you served as  
 20 Highland's CFO, did Highland ever forgive, in  
 21 whole or in part, any loan that it ever made to  
 22 any officer or employee?  
 23 A. Highland forgave loans to officers  
 24 and employees. It may not have been at the  
 25 time when my title was CFO.

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1 WATERHOUSE - 10-19-21  
 2 that were of – you know, that were deemed  
 3 immaterial, those items may not have been  
 4 disclosed by the team to the auditors.  
 5 Q. I appreciate that.  
 6 Do you have an understanding as to  
 7 what the level of materiality was?  
 8 A. I don't recall.  
 9 Q. As the CFO of Highland, to the best  
 10 of your knowledge, did Highland disclose to its  
 11 outside auditors every loan that was forgiven,  
 12 in whole or in part, that was material as that  
 13 term was defined by the outside auditors?  
 14 A. Yes.  
 15 Q. And do you recall where – do you  
 16 recall where the definition of materiality can  
 17 be found for – for this particular purpose?  
 18 MS. DANDENEAU: Objection to form.  
 19 A. No. You – I don't determine  
 20 materiality.  
 21 Q. Okay. I'm just asking you if you  
 22 can help me understand where it is, but I think  
 23 we will find it in a few minutes.  
 24 You are aware that Highland has  
 25 commenced lawsuits against each of the

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1 WATERHOUSE - 10-19-21  
 2 affiliates, as we've defined the term, to  
 3 collect under certain promissory notes; is that  
 4 right?  
 5 A. Yes.  
 6 Q. And are you familiar with the notes  
 7 that are issue – at issue in the lawsuits?  
 8 MS. DANDENEAU: Objection to form.  
 9 A. Generally familiar.  
 10 Q. Can we refer to the lawsuits that  
 11 Highland has commenced against the affiliates  
 12 collectively as the lawsuits?  
 13 A. Yes. And, again, the affiliates are  
 14 NexPoint, HCMFA, HCMS, and HCRE.  
 15 Q. And Mr. Dondero?  
 16 A. Okay. See, that is a new – and now  
 17 Mr. Dondero is included in your affiliate  
 18 definition.  
 19 Q. I just –  
 20 A. I thought affiliates – I thought  
 21 affiliates were just the four prior entities,  
 22 so I just want to be clear.  
 23 Q. I appreciate that. So let's –  
 24 let's keep them separate and let's refer to the  
 25 four corporate entities as the affiliates, and

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1 WATERHOUSE - 10-19-21  
 2 were given by the affiliates and Mr. Dondero?  
 3 A. Yes.  
 4 Q. Can you describe the process for me?  
 5 A. The process, payment should be  
 6 applied as laid out in the – in the promissory  
 7 note.  
 8 Q. From time to time were payments made  
 9 that were not required under the promissory  
 10 notes?  
 11 MS. DANDENEAU: Objection to form.  
 12 A. Yes.  
 13 Q. Who was responsible for deciding  
 14 when and how much the payments would be made  
 15 with respect to each of the notes that were  
 16 issued by the affiliates and Mr. Dondero?  
 17 A. Who was responsible for deciding how  
 18 much was paid prior to the due date?  
 19 Q. Yes.  
 20 A. I don't know.  
 21 Q. Did you approve of each payment that  
 22 was made against principal and interest on the  
 23 notes that were given by the affiliates and  
 24 Mr. Dondero?  
 25 MS. DANDENEAU: Objection to form.

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1 WATERHOUSE - 10-19-21  
 2 Mr. Dondero we will call Mr. Dondero. Okay?  
 3 A. Okay. Thank you. As you can see,  
 4 Mr. Morris, there is a lot of entities – a lot  
 5 here. I just want to be clear.  
 6 Q. Okay. Now, the affiliates of  
 7 Mr. Dondero signed promissory notes that are  
 8 not subject to the lawsuit.  
 9 Do you understand that?  
 10 MS. DANDENEAU: Objection to form.  
 11 A. The affiliates and Mr. Dondero  
 12 signed –  
 13 Q. You know what? I will skip it.  
 14 That is okay. Okay.  
 15 From time to time while you were  
 16 Highland's CFO, payments were applied against  
 17 principal and interests that were due under the  
 18 notes that were tendered by the affiliates and  
 19 Mr. Dondero; correct?  
 20 MR. RUKAVINA: Objection to the  
 21 extent that calls for a legal conclusion.  
 22 A. Yes.  
 23 Q. Did Highland have a process where –  
 24 whereby payments would be applied against  
 25 principal and interest against the notes that

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1 WATERHOUSE - 10-19-21  
 2 A. Did I approve the payments? I  
 3 approve – I approve – if there was cash – if  
 4 there was cash being repaid on a note payment,  
 5 yes, I approved in the general sense of being  
 6 made aware of the payment and the amount.  
 7 Q. And are you the person who  
 8 authorized Highland's employees to effectuate  
 9 those payments?  
 10 A. Yes.  
 11 Q. When you gave the instruction to  
 12 effectuate the payment, did you obtain  
 13 Mr. Dondero's prior approval?  
 14 A. I mean, it – I mean, it – it  
 15 depends.  
 16 Q. Can you think of any instance where  
 17 you directed Highland's employees to make a  
 18 payment of principal or interest against any  
 19 note that was tendered by an affiliate or  
 20 Mr. Dondero that Mr. Dondero did not approve of  
 21 in advance?  
 22 A. I can't recall specifically.  
 23 Q. Can you identify – withdrawn.  
 24 Did Mr. Dondero ever tell you that a  
 25 payment that was made against principal and

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1 WATERHOUSE - 10-19-21  
 2 interest due under one of the notes that was  
 3 tendered by an affiliate or himself should not  
 4 have been made?  
 5 A. Yes.  
 6 Q. Can you identify the payment for me?  
 7 A. It would be for -- for NexPoint  
 8 Advisors.  
 9 Q. Okay. And when did Mr. Dondero tell  
 10 you that a payment that you had initiated on  
 11 behalf of NexPoint should not have been made?  
 12 A. I wasn't initiating payment. It was  
 13 in the context of the -- I think you used this  
 14 term, "the advisors," so NexPoint Advisors and  
 15 Highland Capital Management Fund Advisors had  
 16 overpaid on certain agreements with Highland  
 17 Capital Management, L.P. And as a part of that  
 18 process, the advisors -- what I was told at the  
 19 time were in talks and negotiations and  
 20 discussions with Highland Capital Management,  
 21 L.P., on offsets in relation to those  
 22 overpayments.  
 23 Q. When did this conversation take  
 24 place?  
 25 MS. DANDENEAU: Objection to form.

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1 WATERHOUSE - 10-19-21  
 2 A. No.  
 3 Q. Are you certain that the payment --  
 4 that the payment that you have in mind related  
 5 to the promissory note that NexPoint issued in  
 6 favor of Highland?  
 7 MS. DANDENEAU: Objection to form.  
 8 A. Yes.  
 9 Q. Okay. Other than that one payment,  
 10 can you identify any other instance where  
 11 Mr. Dondero told you that a payment should not  
 12 have been applied against principal and  
 13 interest under any promissory note tendered by  
 14 any affiliate or Mr. Dondero?  
 15 MS. DANDENEAU: Objection to form.  
 16 MS. DEITSCH-PEREZ: Objection to  
 17 form.  
 18 A. Not that I recall.  
 19 Q. Thank you very much.  
 20 Do you know if Mr. Dondero approved  
 21 in advance of each loan made to each affiliate  
 22 and himself during the time that you were the  
 23 CFO?  
 24 MS. DEITSCH-PEREZ: Object to the  
 25 form.

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1 WATERHOUSE - 10-19-21  
 2 A. I don't recall specifically.  
 3 Q. Do you recall what year it was?  
 4 A. Yes.  
 5 Q. What year did the conversation with  
 6 Mr. Dondero take place that you just described?  
 7 A. 2020.  
 8 Q. Okay. Do you remember if it was  
 9 December 2020?  
 10 A. It -- it -- I don't -- I don't  
 11 recall what month specifically, but it would  
 12 have been November or December.  
 13 Q. And we're talking here about a  
 14 payment of principal and/or interest that was  
 15 due -- withdrawn.  
 16 We're talking here about a payment  
 17 of principal and interest that was applied  
 18 against NexPoint's note; correct?  
 19 MS. DANDENEAU: Objection to form.  
 20 A. I don't recall what that payment  
 21 consisted of.  
 22 Q. Is it possible that the payment you  
 23 have in mind related to the shared services  
 24 agreement?  
 25 MS. DANDENEAU: Objection to form.

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1 WATERHOUSE - 10-19-21  
 2 A. Yes, generally.  
 3 Q. Can you identify any loan that was  
 4 ever made to an affiliate or to Mr. Dondero  
 5 that Mr. Dondero did not approve of in advance?  
 6 A. Other than the ones that are in  
 7 dispute, I'm not aware.  
 8 Q. Do you believe that Mr. Dondero did  
 9 not approve of each of the loans that are in  
 10 dispute in advance of the time that the loan  
 11 was made?  
 12 MS. DANDENEAU: Objection to form.  
 13 A. Given what is in the dispute, you  
 14 know, and -- and -- and the way things might --  
 15 yeah, I mean...  
 16 Q. I am not asking about the dispute,  
 17 and it was probably my mistake to follow you  
 18 there.  
 19 Were you aware of every loan made by  
 20 Highland to each of its affiliates and  
 21 Mr. Dondero while you were the CFO at the time  
 22 each loan was made?  
 23 A. Was I aware of every loan, yes.  
 24 Q. Okay. And if you put yourself back  
 25 in time, do you recall that any of the loans



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1 WATERHOUSE - 10-19-21  
 2 that were made to one of the affiliates or  
 3 Mr. Dondero during the time that you were the  
 4 CFO was made without Mr. Dondero's prior  
 5 knowledge and approval?  
 6 A. Not that I recall.  
 7 Q. Thank you. In fact, do you – as  
 8 the CFO, would you have allowed Highland to  
 9 loan money to an affiliate or to Mr. Dondero  
 10 without obtaining Mr. Dondero's prior approval?  
 11 MS. DANDENEAU: Objection to form.  
 12 A. I can't – there was so many times  
 13 over the years, I can't speak for every single  
 14 one, but generally, yes, I – I spoke to him.  
 15 Q. You – you never – you never –  
 16 withdrawn. I will just take that.  
 17 Can you recall any payment that was  
 18 ever made against principal and interest on a  
 19 note that was issued in favor of Highland by an  
 20 affiliate or Mr. Dondero that you personally  
 21 did not know about in advance?  
 22 A. There are so many through the years,  
 23 I don't – I don't – I don't recall every  
 24 single one.  
 25 Q. Okay. Can you identify any payment

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1 WATERHOUSE - 10-19-21  
 2 generally, yes.  
 3 Q. Did you personally communicate with  
 4 Mr. Dondero to let him know each time a payment  
 5 of principal or interest was being made against  
 6 any note that was tendered by an affiliate or  
 7 Mr. Dondero to Highland?  
 8 A. I don't – are you saying, did I let  
 9 Mr. Dondero know if a payment was made on any  
 10 affiliate or loan to Mr. Dondero? I mean,  
 11 not – not every – no.  
 12 Q. Let me ask it this way: Did you  
 13 have a practice of informing Mr. Dondero when  
 14 payments were made against principal and  
 15 interest on any note that was tendered by an  
 16 affiliate or Mr. Dondero?  
 17 MS. DEITSCH-PEREZ: Objection to  
 18 form.  
 19 MS. DANDENEAU: Objection to form.  
 20 A. No, I did not.  
 21 Q. Did Mr. Dondero ever tell you that a  
 22 payment of principal or interest had been made  
 23 against a note that was tendered by an  
 24 affiliate or himself that he had been unaware  
 25 of?

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1 WATERHOUSE - 10-19-21  
 2 that was made against principal and interest on  
 3 any note tendered by any affiliate or  
 4 Mr. Dondero that you didn't know about in  
 5 advance?  
 6 A. I don't recall.  
 7 Q. Other than Mr. Dondero – withdrawn.  
 8 Did anybody at Highland have the  
 9 authority to make a payment against principal  
 10 and interest due under a loan given to the  
 11 affiliates and Mr. Dondero without your  
 12 knowledge and approval?  
 13 MS. DANDENEAU: Objection to form.  
 14 A. Sorry, there was – to make a  
 15 payment on an affiliate loan, what you are  
 16 saying would it require my knowledge and  
 17 approval, yes.  
 18 Q. Okay. I appreciate that. Thank  
 19 you.  
 20 Did anybody at Highland have the  
 21 authority, to the best of your knowledge, to  
 22 effectuate a loan to an affiliate without  
 23 Mr. Dondero's prior knowledge and approval?  
 24 MS. DANDENEAU: Objection to form.  
 25 A. I can't speak for all, but

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1 WATERHOUSE - 10-19-21  
 2 A. Not that I recall.  
 3 Q. Are you aware that Mr. Dondero and  
 4 the affiliates – withdrawn.  
 5 Are you aware that Mr. Dondero  
 6 NexPoint, HCRE, and HCMS all contend that they  
 7 do not have to pay on any of the notes they  
 8 issued because they are subject to an oral  
 9 agreement between Mr. Dondero and Nancy  
 10 Dondero, in her capacity as the trustee of the  
 11 Dugaboy Investment Trust?  
 12 MS. DANDENEAU: Objection to form.  
 13 A. I didn't – I didn't – I didn't  
 14 know that it was all notes.  
 15 Q. Okay. Are you – did you ever learn  
 16 that there was an oral agreement between Jim  
 17 Dondero and Nancy Dondero pertaining to any  
 18 notes issued by any affiliate or Mr. Dondero?  
 19 MS. DEITSCH-PEREZ: Object to the  
 20 form.  
 21 A. Yes.  
 22 Q. Do you have any understanding as to  
 23 the terms of that agreement?  
 24 A. Yes.  
 25 Q. What is your understanding of the

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1 WATERHOUSE - 10-19-21  
 2 terms of the agreement?  
 3 A. That there were certain milestones  
 4 that had to be reached.  
 5 Q. Do you have any understanding of the  
 6 terms of the agreement between Mr. Dondero and  
 7 Nancy Dondero concerning any of the notes  
 8 issued by the affiliates or Mr. Dondero other  
 9 than that there have to be milestones reached?  
 10 MS. DEITSCH-PEREZ: Object to the  
 11 form.  
 12 A. There are milestones, I found out  
 13 yesterday, or there was some –  
 14 MS. DANDENEAU: Okay. I'm just  
 15 going to object to the extent that you  
 16 learned anything in conversations with  
 17 counsel, please don't reveal – that is  
 18 privileged, and don't reveal any privileged  
 19 communications.  
 20 THE WITNESS: Okay.  
 21 A. So I'm not aware of anything else.  
 22 Q. Do you know what the milestones  
 23 were?  
 24 MS. DANDENEAU: Objection to form.  
 25 A. I don't.

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1 WATERHOUSE - 10-19-21  
 2 A. I don't recall.  
 3 Q. Do you recall how you learned of the  
 4 agreement?  
 5 Was it in a meeting? Was it in a  
 6 phone call? Was it in an email?  
 7 A. I don't recall.  
 8 Q. Do you recall when you learned of  
 9 the agreement?  
 10 A. Not specifically.  
 11 Q. Do you recall what year you learned  
 12 of the agreement?  
 13 A. In – look, I mean, there are so  
 14 many notes. I may be getting – I believe it  
 15 was 2020.  
 16 Q. All right. I'm not asking about  
 17 notes, sir. I'm asking about the agreement  
 18 that you testified you knew about between Jim  
 19 and Don- – Nancy Dondero. Okay.  
 20 Do you understand my question now?  
 21 Should I ask my question again?  
 22 A. Yeah, sure. Go ahead.  
 23 Q. I'm going to use the word  
 24 "agreement" to refer to the agreement that  
 25 Mr. Dondero and Nancy Dondero entered into

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1 WATERHOUSE - 10-19-21  
 2 Q. Do you know anything about – do you  
 3 know what promissory notes the agreement  
 4 covered?  
 5 A. I don't.  
 6 Q. Do you know if – if Jim and Nancy  
 7 Dondero entered into one agreement or more than  
 8 one agreement?  
 9 MS. DEITSCH-PEREZ: Object to the  
 10 form.  
 11 A. I don't know.  
 12 Q. Do you know if the agreement is in  
 13 writing?  
 14 A. I don't know.  
 15 Q. How did you learn of the existence  
 16 of the agreement?  
 17 MS. DANDENEAU: Objection to form.  
 18 Again –  
 19 A. I don't – I don't recall who told  
 20 me.  
 21 Q. You have no recollection of who told  
 22 you about this agreement between Jim and Nancy  
 23 Dondero?  
 24 MS. DEITSCH-PEREZ: Object to the  
 25 form.

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1 WATERHOUSE - 10-19-21  
 2 where you understood that certain milestones  
 3 had to be reached. Okay?  
 4 A. Uh-huh.  
 5 MS. DANDENEAU: Objection.  
 6 MS. DEITSCH-PEREZ: Object to the  
 7 form.  
 8 MR. MORRIS: Just defining a term,  
 9 what is the objection.  
 10 MS. DEITSCH-PEREZ: The objection –  
 11 MR. MORRIS: I will move on. I will  
 12 move on.  
 13 MS. DEITSCH-PEREZ: John –  
 14 Q. Sir, are you okay with that  
 15 definition of agreement?  
 16 A. Okay.  
 17 Q. Okay. So you don't recall who –  
 18 who informed you of the existence of the  
 19 agreement; is that right?  
 20 A. I don't recall.  
 21 Q. You don't recall who told you the  
 22 terms of the agreement.  
 23 Do I have that right?  
 24 A. Correct.  
 25 Q. And you don't recall if you learned

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1 WATERHOUSE - 10-19-21  
 2 about the agreement in a meeting, through an  
 3 email, or through a phone call.  
 4 Do I have that right?  
 5 A. I don't recall.  
 6 Q. Can you tell me when you learned of  
 7 the agreement?  
 8 A. I don't – I don't – I don't  
 9 remember specifically.  
 10 Q. Can you tell me if you learned of  
 11 the agreement before or after the petition  
 12 date?  
 13 A. It would have been – it would have  
 14 been after.  
 15 Q. Can you tell me if you learned of  
 16 the agreement before or after January 9th,  
 17 2020?  
 18 A. It would have been after.  
 19 Q. Can you tell me if you learned of  
 20 the agreement before or after you left Highland  
 21 Capital Management in February of 2021?  
 22 A. I don't – I don't – I don't know.  
 23 Q. It is possible that you learned of  
 24 it while you were a Highland employee.  
 25 Do I have that right?

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1 WATERHOUSE - 10-19-21  
 2 Jim Seery.  
 3 Q. Did you tell anybody at DSI about  
 4 this agreement?  
 5 A. No.  
 6 Q. Did you tell any of Highland's  
 7 independent directors about this agreement?  
 8 A. No.  
 9 Q. Did you tell anybody at Pachulski  
 10 Stang Ziehl & Jones about this agreement?  
 11 A. No.  
 12 Q. Did you tell any employee of  
 13 Highland about this agreement?  
 14 A. No.  
 15 MS. DANDENEAU: Mr. Morris, it has  
 16 been an hour and a half. Is this a good  
 17 time for a break?  
 18 MR. MORRIS: Sure.  
 19 Q. Mr. Waterhouse, I will just remind  
 20 you that during the break please don't speak  
 21 with anybody about the deposition, the  
 22 substance of your testimony or anything else  
 23 concerning the deposition. Okay?  
 24 A. Yes.  
 25 MR. MORRIS: So it is 11:02. We're

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1 WATERHOUSE - 10-19-21  
 2 A. I don't remember the – I mean, it  
 3 was sometime in 2021. I don't remember when.  
 4 Q. All right. So to the best of your  
 5 recollection, it was in 2021 but you don't  
 6 recall if it was before or after you ceased to  
 7 be a Highland employee.  
 8 Do I have that right?  
 9 A. Yeah, I mean, it was – it was  
 10 likely after I was – after I left Highland  
 11 because, if I put myself back into the last  
 12 days of – of 2021, it was – you know, the  
 13 communications with Mr. Dondero were – were –  
 14 were – there weren't as many communications  
 15 because of the circumstances.  
 16 Q. And so based on that you believe  
 17 that it is most likely that you learned of this  
 18 agreement sometime after you left Highland  
 19 employment?  
 20 A. I wouldn't use the term "most  
 21 likely." I don't recall specifically. I don't  
 22 recall.  
 23 Q. Do you recall ever telling Jim Seery  
 24 about this agreement?  
 25 A. No, I don't – I didn't tell

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1 WATERHOUSE - 10-19-21  
 2 at 11:02 your time. Let's come back, I  
 3 guess, at 15 – at 11:15 your time.  
 4 VIDEOGRAPHER: We're going off the  
 5 record at 11:02 a.m.  
 6 (Recess taken 11:02 a.m. to 11:20 a.m.)  
 7 VIDEOGRAPHER: We are back on the  
 8 record at 11:20 a.m.  
 9 Q. Mr. Waterhouse, did you speak with  
 10 anybody during the break about this deposition?  
 11 A. No.  
 12 MS. DANDENEAU: Other than – other  
 13 than his counsel.  
 14 Q. Did you speak to your counsel about  
 15 the substance of your deposition today?  
 16 A. No, I didn't bring it up.  
 17 Q. I didn't ask you if you brought it  
 18 up. I asked you if you had any conversation  
 19 with your lawyer about the substance of your  
 20 deposition.  
 21 MS. DANDENEAU: Yes, he did.  
 22 Q. Can you tell me what the – you  
 23 discussed?  
 24 MS. DANDENEAU: No, I object to  
 25 that. He's not going to answer. That is a

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1 WATERHOUSE - 10-19-21  
 2 privileged conversation.  
 3 MR. MORRIS: So I just want to make  
 4 sure that I understand. During the break  
 5 you spoke with your client about the  
 6 substance of this deposition; is that  
 7 right?  
 8 MS. DANDENEAU: Yes, John.  
 9 MR. MORRIS: And you refuse – you  
 10 refuse to let your client tell me what was  
 11 discussed; is that right?  
 12 MS. DANDENEAU: That's correct.  
 13 MR. MORRIS: You know, I had given  
 14 the instruction prior to the break not to  
 15 speak with counsel. I would have  
 16 appreciated –  
 17 MS. DANDENEAU: No, you didn't –  
 18 actually, that is not true, Mr. Morris.  
 19 You said not to speak with anyone. We  
 20 never have interpreted that to mean  
 21 conversations with counsel. That's never  
 22 been – I have never, ever heard that  
 23 instruction.  
 24 MR. MORRIS: Okay. We will – we  
 25 will – we will deal with it when and if we

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1 WATERHOUSE - 10-19-21  
 2 notes where you learned that one of the terms  
 3 of the agreement was milestones reached?  
 4 A. Okay.  
 5 Q. And did you understand that that was  
 6 the – the agreement that we were referring to  
 7 every time we used the word "agreement" in this  
 8 deposition?  
 9 A. I don't know anything about this  
 10 agreement. So, look, I do – it – I don't  
 11 know whether –  
 12 Q. Let's – let's try this again.  
 13 A. Yeah. Look, I don't know what this  
 14 agreement relates.  
 15 MS. DEITSCH-PEREZ: John, John –  
 16 Q. Let me try –  
 17 MS. DEITSCH-PEREZ: John, please let  
 18 the witness finish.  
 19 MR. MORRIS: Please stop. Please  
 20 stop. Please stop talking.  
 21 MS. DEITSCH-PEREZ: No, you stop.  
 22 Let the witness –  
 23 MR. MORRIS: Stop talking.  
 24 MS. DEITSCH-PEREZ: – finish – you  
 25 interrupted him.

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1 WATERHOUSE - 10-19-21  
 2 have to.  
 3 Q. Mr. Waterhouse, after learning about  
 4 the agreement, did you ask anybody if the  
 5 agreement was reflected in a writing?  
 6 MS. DANDENEAU: Objection to form.  
 7 A. No.  
 8 Q. Did you ask anybody if the terms of  
 9 the agreement were memorialized anywhere?  
 10 MS. DANDENEAU: Objection to form.  
 11 MR. MORRIS: What is the –  
 12 A. No.  
 13 MS. DANDENEAU: Well, because you  
 14 keep talking about this agreement and I –  
 15 I – I think, Mr. Morris, that is really  
 16 not clear what you mean by "the agreement."  
 17 And maybe you can just go back and restate  
 18 what that is.  
 19 MR. MORRIS: Okay. Your client has  
 20 agreed with me twice on the definition, but  
 21 I will try one more time.  
 22 Q. Mr. Waterhouse, do you understand  
 23 that when I use the term "agreement," I'm  
 24 referring to the agreement between Jim and  
 25 Nancy Dondero concerning certain promissory

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1 WATERHOUSE - 10-19-21  
 2 MR. MORRIS: You know what, you  
 3 guys, this is really wrong. It is really,  
 4 really wrong. Okay?  
 5 I had the witness agree not once,  
 6 but twice to the definition of agreement.  
 7 Okay? I'm going to try and do it a third  
 8 time.  
 9 MS. DANDENEAU: No, but, please,  
 10 John, really –  
 11 MR. MORRIS: No, please stop  
 12 talking. Please. It is my deposition.  
 13 Object to questions.  
 14 MS. DANDENEAU: No, but also you  
 15 instructed him that – that if you were  
 16 going – if you were interrupting him, that  
 17 he should remind you that you're  
 18 interrupting him and – and –  
 19 MR. MORRIS: Let him do that. Let  
 20 him do that.  
 21 MS. DANDENEAU: Okay. Well, you –  
 22 MR. MORRIS: Please stop talking.  
 23 A. Okay. I don't know any of the  
 24 details of these agreements. I don't know  
 25 anything about them. I heard – someone – I

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1 WATERHOUSE - 10-19-21  
 2 don't know who, I don't know when, as you  
 3 asked, sometime in '21, someone told me about  
 4 this – or I don't honestly know – I don't  
 5 even recall exactly how I was made aware of  
 6 this, but I was. I don't know – I don't know  
 7 any of these details, and I'm getting – again,  
 8 there is, you know, I – I – I had a passing  
 9 conversation with – with Jim at some point  
 10 on – on some – on the executive comp, and I'm  
 11 getting confused of what is what, because  
 12 again, I don't know any of these details.  
 13 Q. Okay. Let me try again,  
 14 Mr. Waterhouse, and I apologize.  
 15 Are you aware of any agreement  
 16 between Jim Dondero and Nancy Dondero  
 17 concerning any promissory note that was given  
 18 to Highland by any affiliate or Mr. Dondero?  
 19 MS. DEITSCH-PEREZ: Object to the  
 20 form.  
 21 A. I've heard of an agreement. That  
 22 is – that is – I mean, if you are using aware  
 23 as heard, sure.  
 24 Q. And you understand that one of the  
 25 terms of the agreement is that it was based on

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1 WATERHOUSE - 10-19-21  
 2 form.  
 3 Q. You can answer.  
 4 A. I don't – I heard about the  
 5 agreement. I don't know anything – I heard  
 6 there was an agreement. That is – again, as I  
 7 testified before – I said before, heard about  
 8 it, don't know the details. I believe it was  
 9 sometime this year.  
 10 Q. Do you have any personal knowledge  
 11 about the terms of the agreement, sir?  
 12 MS. DANDENEAU: Objection to form.  
 13 A. Other than what I have previously  
 14 discussed, I don't – I don't know.  
 15 Q. Did – did Mr. Dondero tell you  
 16 about the existence of the agreement?  
 17 A. I don't recall.  
 18 Q. Do you recall the source of your  
 19 information when you learned about the  
 20 agreement?  
 21 A. No, I don't – I don't recall. I  
 22 don't remember. I just – I heard about it  
 23 generally. I don't remember – I don't  
 24 remember who, how, if, how. I don't remember.  
 25 Q. You know, Mr. Waterhouse, I just

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1 WATERHOUSE - 10-19-21  
 2 milestones that had to be reached; is that  
 3 right?  
 4 MS. DANDENEAU: Objection to form.  
 5 A. That was one of the words that was  
 6 used when I heard about it, yes.  
 7 Q. And when you heard about this  
 8 agreement that had a term in it concerning  
 9 milestones reached, did you ask the person who  
 10 was telling you about the agreement whether or  
 11 not it was in writing?  
 12 A. I did not.  
 13 Q. Did you ask any questions at all?  
 14 MS. DANDENEAU: Objection to form.  
 15 A. Not that I recall.  
 16 Q. But do you understand that going  
 17 forward, we're going to refer to the agreement  
 18 as the agreement that you just described that  
 19 you were –  
 20 MS. DANDENEAU: Object to the form.  
 21 A. Yes.  
 22 Q. Okay. You don't have any personal  
 23 knowledge concerning the terms of the  
 24 agreement; correct?  
 25 MS. DEITSCH-PEREZ: Object to the

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1 WATERHOUSE - 10-19-21  
 2 want to be clear that I never would have asked  
 3 you to appear at this deposition if your name  
 4 hadn't been included in responses to discovery  
 5 as to somebody with knowledge about the – who  
 6 was told about the existence of the agreement.  
 7 That is what prompted me do this,  
 8 and I really do feel compelled to tell you that  
 9 I otherwise would never have called you as a  
 10 witness. So I regret that you're being put  
 11 through this today. I had no intention of  
 12 burdening you or taking your time, but that is  
 13 the reason that we issued the subpoena is  
 14 because certain of the defendants identified  
 15 you as somebody –  
 16 MS. DEITSCH-PEREZ: Mr. Morris, you  
 17 are here to ask questions, not to have –  
 18 MR. MORRIS: I feel badly for the  
 19 guy. I really do.  
 20 MS. DEITSCH-PEREZ: I'm sure you do.  
 21 MR. MORRIS: I do. Stop.  
 22 MS. DEITSCH-PEREZ: You stop.  
 23 MR. MORRIS: I'm allowed.  
 24 MS. DEITSCH-PEREZ: No, you're not  
 25 allowed to have a chat with the witness.

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Well, I hope that you  
 3 appreciate what I'm saying here,  
 4 Mr. Waterhouse.  
 5 MS. DANDENEAU: All right. Let's go  
 6 ahead and ask questions, and again, you're  
 7 entitled to probe his -- his knowledge  
 8 of -- whatever knowledge he has about  
 9 this -- this agreement and --  
 10 MR. MORRIS: That is what I'm doing.  
 11 MS. DANDENEAU: -- he will answer  
 12 the questions to the best that he can.  
 13 MR. MORRIS: That is what I'm doing.  
 14 Q. Mr. Waterhouse, I take it you do not  
 15 know which promissory notes issued by which  
 16 affiliates or Mr. Dondero are the subject of  
 17 this agreement; do I have that right?  
 18 A. Yes, I don't -- I don't know.  
 19 Q. Do you know of any way to determine  
 20 which promissory notes issued by the affiliates  
 21 and Mr. Dondero are the subject of this  
 22 agreement other than asking Jim or Nancy  
 23 Dondero?  
 24 MS. DANDENEAU: Objection to form.  
 25 A. I don't know.

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1 WATERHOUSE - 10-19-21  
 2 A. No.  
 3 Q. Did anybody ever describe to you the  
 4 nature of the milestones that you referred to  
 5 earlier?  
 6 A. No, I don't -- I don't have any  
 7 details of this.  
 8 Q. That is fine.  
 9 PricewaterhouseCoopers served as  
 10 Highland's outside auditors prior to the  
 11 petition date; correct?  
 12 A. Yes.  
 13 Q. You refer to PricewaterhouseCoopers  
 14 as PwC?  
 15 A. Yes.  
 16 Q. PricewaterhouseCoopers audited  
 17 Highland's financial statements on an annual  
 18 basis; correct?  
 19 A. During my -- during my time as -- as  
 20 CFO, yes, PricewaterhouseCoopers was the  
 21 auditor.  
 22 Q. Do you know why Highland had its  
 23 annual financial statements audited each year?  
 24 A. Generally.  
 25 Q. Tell me your general understanding

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1 WATERHOUSE - 10-19-21  
 2 Q. Did you ever make --  
 3 A. I don't know anything about these  
 4 agreements.  
 5 Q. Did you ever make any effort to  
 6 determine which promissory notes are subject to  
 7 this agreement?  
 8 A. No.  
 9 Q. Did you ever ask anybody which  
 10 promissory notes are subject to this agreement?  
 11 A. No.  
 12 Q. Do you know if there is a list  
 13 anywhere of the promissory notes that are  
 14 subject to this agreement?  
 15 A. I'm not aware.  
 16 Q. Have you ever seen the terms of the  
 17 agreement written down anywhere?  
 18 A. No.  
 19 Q. Have you ever asked anybody whether  
 20 the terms of the agreement were written down  
 21 anywhere?  
 22 A. I have not.  
 23 Q. Did learning about the agreement  
 24 cause you to do anything in response?  
 25 MS. DANDENEAU: Objection to form.

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1 WATERHOUSE - 10-19-21  
 2 as to the reason why Highland had its annual  
 3 financial statements audited each year.  
 4 A. From -- from time to time, they were  
 5 used -- or asked for, as part of diligence or  
 6 transactions or -- or things of that nature.  
 7 Q. And were they given to third parties  
 8 for purposes of diligence or transactions from  
 9 time to time?  
 10 A. As far as I'm aware, yes.  
 11 Q. And was it your understanding as the  
 12 CFO that the third parties who received the  
 13 financial statements in diligence or  
 14 transactions was going to rely on those?  
 15 MS. DANDENEAU: Objection to form.  
 16 A. I don't know -- I don't know gen --  
 17 I don't know specifically what they were going  
 18 to rely on. You know, we would get requests  
 19 for audited financial statements. I don't know  
 20 what they were relying on.  
 21 Q. And --  
 22 A. You would have to ask them.  
 23 Q. Did you personally play a role in  
 24 PwC's annual audit and the conduct of the  
 25 audit?

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1 WATERHOUSE - 10-19-21  
 2 MS. DANDENEAU: Objection to form.  
 3 A. During my tenure as CFO, I played a  
 4 very minimal role.  
 5 Q. What was the minimal role that you  
 6 played?  
 7 A. You know, again, it was – it was to  
 8 check in with the team, to make sure that, you  
 9 know, audit – the deadlines were being hit,  
 10 information was being presented to the auditors  
 11 in a – in a timely fashion, but, you know,  
 12 other than that, it was a very capable team  
 13 that are still current employees of Highland  
 14 and, you know, they – they conducted 99  
 15 percent of – look, I don't want to give  
 16 percentages. I mean, this is – but I – I –  
 17 I played a minimal role towards the end.  
 18 Before during my earlier years as  
 19 CFO, I did more, and then as time went on, I  
 20 did less in it.  
 21 Q. Okay. Was there a person at  
 22 Highland who was responsible for overseeing  
 23 Highland's participation in PwC's audit during  
 24 the time that you were the CFO?  
 25 A. Yeah. I mean, there was – there

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1 WATERHOUSE - 10-19-21  
 2 ran the audit all report to you, directly or  
 3 indirectly?  
 4 A. Yes.  
 5 Q. And did you have any responsibility  
 6 for making sure that the audit report was  
 7 accurate before it was finalized?  
 8 A. Yeah. I mean, you know, that –  
 9 that is – my responsibility to the auditors  
 10 was – again, is – and the CFO is to – we are  
 11 providing accurate financial statements; right?  
 12 And – and – and as part of any  
 13 audit, we disclose all relevant information as  
 14 part of any audit.  
 15 Q. Okay. And as the CFO, did you take  
 16 steps to make sure that the audit report was  
 17 accurate?  
 18 A. I mean, I would say in a general  
 19 sense, yes. But, again, I mean, I had a  
 20 very – I had a very capable and competent  
 21 team. I wasn't managing them.  
 22 You know, part of what I do is I let  
 23 the team – I want managers to grow. I want  
 24 managers to have rope. And that is – you  
 25 know, I'm not a stand-behind-you type of guy.

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1 WATERHOUSE - 10-19-21  
 2 was a – there was a point – it varies. It  
 3 varies by year, in function, in time and, you  
 4 know, depending on the request, but yes, I  
 5 mean, there is – there is – there is  
 6 generally a point person of communication.  
 7 Q. And who was the point person from  
 8 2016 until the time you left Highland?  
 9 A. I don't – I don't know  
 10 specifically, but it would have been, you  
 11 know – you know, someone on the corporate  
 12 accounting team.  
 13 Q. And was there a head of the  
 14 corporate accounting team?  
 15 A. Yes, so – yes.  
 16 Q. Who was the head of corporate  
 17 accounting for the five years prior to the time  
 18 you left Highland?  
 19 A. I don't – if you're asking from  
 20 2016 on, I don't – it was Dave Klos, but,  
 21 again, there was – there was changes to the  
 22 team and the reporting structure. I don't  
 23 remember exactly when that happened during –  
 24 you know, over the last – since 2016.  
 25 Q. Did the folks who participated and

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1 WATERHOUSE - 10-19-21  
 2 If you – if you talk to my team members, I'm  
 3 not micromanaging people. I want people to  
 4 learn and grow in their function so they can go  
 5 on and do bigger and better things with their  
 6 careers.  
 7 And so, yes, generally I was  
 8 responsible for it, but I wanted the team to  
 9 learn and grow and be responsible for the bulk  
 10 of the audit.  
 11 Q. Did you personally review each audit  
 12 report before it was finalized to satisfy  
 13 yourself that it was accurate?  
 14 A. I don't – I don't recall, you know,  
 15 for every single – we're talking 2016, there  
 16 would have been three years, 2016 to '17, '18.  
 17 I don't – we're – we're going back  
 18 five years-plus. I don't – you know, I don't  
 19 recall.  
 20 Q. Did you have a practice that you  
 21 employed to make sure that you were satisfied  
 22 that Highland's audit reports were true and  
 23 accurate to the best of your knowledge?  
 24 A. I mean, our – the practice was set  
 25 up with our – the – the practice to put

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1 WATERHOUSE - 10-19-21  
 2 together accurate audited or accurate financial  
 3 statements is to your control environment.  
 4 So, you know, the -- so the practice  
 5 was to maintain a stable control environment  
 6 which then the output is -- is accurate  
 7 financial statements.  
 8 So -- so, you know, if I was  
 9 comfortable that the control environment was  
 10 operating, then, you know, that would dictate  
 11 how I would -- you know, what I might or might  
 12 not do in a given year.  
 13 Q. Okay. Do you recall ever being  
 14 uncomfortable with the control environment  
 15 during the period that you served as CFO?  
 16 A. Yeah. I mean, look, yes, there are  
 17 times -- you know, nothing is perfect. So  
 18 there were -- there were times when, yes, you  
 19 know -- there are times I learned I was  
 20 uncomfortable with the control environment, and  
 21 that is part of the management of the process  
 22 and having, you know -- and -- and working  
 23 through whatever obstacles present themselves.  
 24 Q. Okay. Were you ever uncomfortable  
 25 with the control process as it related to

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1 WATERHOUSE - 10-19-21  
 2 this is a letter dated June 3rd. And if we  
 3 could go to the signature page.  
 4 And do you see that you and  
 5 Mr. Dondero signed this document?  
 6 A. Yes.  
 7 Q. That is your signature; right?  
 8 A. Yes.  
 9 MR. MORRIS: Okay. Can you go back  
 10 to the top.  
 11 MS. DANDENEAU: Mr. Morris, can you  
 12 have somebody post this in the chat so that  
 13 we have can have a copy of this, please.  
 14 MR. MORRIS: Yeah, sure. Asia, can  
 15 you do that, please.  
 16 Q. Okay. Do you see at the bottom of  
 17 the second paragraph there is a reference to  
 18 materiality?  
 19 A. Yes.  
 20 Q. Okay. It says, Materiality used for  
 21 purposes of these representations is  
 22 \$1.7 million.  
 23 Do you see that?  
 24 A. I do.  
 25 Q. And did PwC set that level of

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1 WATERHOUSE - 10-19-21  
 2 reporting and disclosures of loans to  
 3 affiliates and Mr. Dondero?  
 4 MS. DANDENEAU: Objection to form.  
 5 A. I don't -- I don't recall --  
 6 Q. So you don't recall --  
 7 A. -- the --  
 8 MS. DANDENEAU: Mr. Morris --  
 9 A. I don't recall being uncomfortable.  
 10 But, again, we're going back several years. I  
 11 don't -- you know, the practice in an audit is  
 12 to disclose all information to the auditors.  
 13 And I don't -- I don't recall.  
 14 Q. As part of the process of the audit,  
 15 did you sign what is sometimes referred to as a  
 16 management representation letter?  
 17 A. Yes.  
 18 MR. MORRIS: Can we put up on the  
 19 screen a document that we have premarked as  
 20 Exhibit 33.  
 21 (Exhibit 33 marked.)  
 22 MS. DANDENEAU: Mr. Morris, that is  
 23 not in the binder; correct?  
 24 MR. MORRIS: Correct.  
 25 Q. So you will see, Mr. Waterhouse,

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1 WATERHOUSE - 10-19-21  
 2 materiality?  
 3 A. Yes.  
 4 Q. And for purposes of the audit, did  
 5 PwC set the level of materiality each year?  
 6 A. Yes.  
 7 Q. Did that number change over time?  
 8 A. I'm not aware of what materiality is  
 9 every single year, so -- but, you know, this  
 10 number would likely fluctuate.  
 11 Q. Okay. I'm going to go back to a  
 12 question I asked you earlier today. And that  
 13 is in connection -- this letter is issued in  
 14 connection with the audit for the period ending  
 15 12/31/2018; correct?  
 16 A. Yes.  
 17 Q. Okay. And is it fair to say that if  
 18 any -- actually, withdrawn. I'm going to take  
 19 it outside of this.  
 20 If Highland ever forgave the loan to  
 21 any affiliate or any of its officers or  
 22 employees, in whole or in part, to the best of  
 23 your knowledge, would that forgiveness have  
 24 been disclosed in the audited financial  
 25 statements if it exceeded the level of



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1 WATERHOUSE - 10-19-21  
 2 materiality that PwC established?  
 3 MS. DANDENEAU: Objection to form.  
 4 A. So, again, during my tenure as CFO,  
 5 and – Highland – it was – it is required to  
 6 disclose any affiliate loans that are in excess  
 7 of materiality.  
 8 Now, the forgiveness of those loans  
 9 may or may not – I mean, since materiality  
 10 fluctuates every year, a – you know, if a loan  
 11 was forgiven, it may or may not, you know –  
 12 and, look, I would want to consult the guidance  
 13 around this.  
 14 It is not something we do – you  
 15 know, it is not – you know, GAAP can be and  
 16 disclosures can be very specialized so, again,  
 17 we want to consult the guidance. But we would  
 18 see if and what would need to be disclosed if  
 19 it were deemed immaterial.  
 20 Q. Did you and Mr. Dondero sign  
 21 management representation letters of this type  
 22 in each year in which you served as Highland's  
 23 CFO?  
 24 A. I – I – I will speak for myself.  
 25 I signed them. There may have been others that

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1 WATERHOUSE - 10-19-21  
 2 but I don't – I don't know for sure, and I  
 3 would want to rely on the document.  
 4 Q. Let me ask the question a little bit  
 5 differently then.  
 6 Do you have any reason to believe  
 7 that Highland had its annual financial audit  
 8 and you did not sign a management  
 9 representation letter in connection with that  
 10 audit?  
 11 MS. DANDENEAU: Objection to form.  
 12 A. I don't believe it would, but,  
 13 again, I would want to – I don't recall and I  
 14 would want to confirm it to – to make, you  
 15 know, an affirmative – to give an affirmative  
 16 answer.  
 17 Q. Do you know whether PwC required  
 18 management to sign management representation  
 19 letters?  
 20 MS. DANDENEAU: Objection to form.  
 21 A. Yes. I mean, it – management  
 22 representation letters are signed by  
 23 management.  
 24 Q. Okay. And do you know – do you  
 25 have any understanding as to why PwC requires

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1 WATERHOUSE - 10-19-21  
 2 signed as well. I don't – I don't recall.  
 3 Q. But to the best of your knowledge,  
 4 you, personally, signed a management  
 5 representation letter in connection with  
 6 Highland's audit each year that you served as  
 7 the CFO; correct?  
 8 A. I would say generally speaking,  
 9 Mr. Morris. I don't recall for every single  
 10 year, you know, generally, but I would want to  
 11 refer to all the rep letters and see who signed  
 12 them.  
 13 Q. Do you recall Highland having its  
 14 financial statements audited in any year during  
 15 the period that you were a CFO where you didn't  
 16 sign the management representation letter?  
 17 A. I don't recall. But, John, we're  
 18 going back five, six, seven, eight, nine,  
 19 decade. I don't – I don't remember.  
 20 Q. I don't want to go back that many  
 21 decades, but I'm just asking you if you recall  
 22 that there was you didn't sign it?  
 23 A. I – I – I don't, but my memory  
 24 is – again, I – I – I can't tell you what I  
 25 did in 2012. I mean, I think generally, yes,

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1 WATERHOUSE - 10-19-21  
 2 management to sign management representation  
 3 letters?  
 4 MS. DEITSCH-PEREZ: Object to the  
 5 form.  
 6 A. I don't know why PwC's – what PwC's  
 7 specific practice is. I know generally what  
 8 management representation letters are.  
 9 Q. Okay. Do you personally – I'm not  
 10 asking about PwC. I'm asking for you – I'm  
 11 asking about you, do you have an understanding  
 12 as to why the auditor asks for management  
 13 representation letters?  
 14 A. Okay. So you're asking me in my  
 15 personal capacity, yes, I have a general  
 16 understanding of why.  
 17 Q. Can you give me the general  
 18 understanding that you have as to why  
 19 management representation letters are required?  
 20 A. They are – they are required to –  
 21 they are – they are one of the items required  
 22 in an audit to help verify completeness.  
 23 Q. Do you have any – any other  
 24 understanding as to why management  
 25 representation letters are required?

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1 WATERHOUSE - 10-19-21  
 2 A. That is – that is – other than  
 3 what I said, it is – it is – it is required  
 4 so – to ensure that the – you know, there  
 5 is – there is completeness in what is being  
 6 audited.  
 7 Q. Did you – did you have a practice  
 8 whereby you and Mr. Dondero conferred about the  
 9 management representation letters before you  
 10 signed them?  
 11 A. No.  
 12 Q. Did you have a practice –  
 13 withdrawn.  
 14 Do you see just the next sentence  
 15 after the materiality, there is a sentence that  
 16 states: We confirm, to the best of our  
 17 knowledge and belief, as of June 3rd, 2019, the  
 18 date of your report, the following  
 19 representations made to you during your audit.  
 20 Do you see that sentence?  
 21 A. Yes.  
 22 Q. Okay. Did you understand when you  
 23 signed this letter that you were confirming the  
 24 representations that followed?  
 25 A. When I signed this management

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1 WATERHOUSE - 10-19-21  
 2 A. The agreement – the agreement that  
 3 we talked about earlier?  
 4 Q. Correct.  
 5 A. Look, as I said earlier, the first  
 6 time I heard of this agreement was sometime  
 7 this year.  
 8 Q. Okay. Can we turn – let's just  
 9 look at a couple of items on the list. If we  
 10 can go to page 33416. Do you see in Number 35  
 11 it talks about the proper recording or  
 12 disclosure in the financial statements of ND  
 13 relationships and transactions with related  
 14 parties.  
 15 Do you see that?  
 16 A. I do.  
 17 Q. As the CFO, do you have any  
 18 understanding as to whether Dugaboy is a  
 19 related party?  
 20 A. I don't recall.  
 21 Q. Do you know whether any of the  
 22 affiliates are related parties?  
 23 A. If – if it was NexPoint, HCMFA,  
 24 HCMS, HCRE, yeah, if – if that is the  
 25 affiliate definition, and there. In ASC 850 –

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1 WATERHOUSE - 10-19-21  
 2 letter – representation letter, yes.  
 3 Q. Okay. Did you discuss this letter  
 4 with Mr. Dondero before you signed it?  
 5 A. I don't recall.  
 6 Q. Do you recall if Mr. Dondero asked  
 7 you any questions before he signed the letter?  
 8 A. I don't recall.  
 9 Q. Do you recall if you asked  
 10 Mr. Dondero any questions before you signed  
 11 this letter?  
 12 A. I don't recall.  
 13 Q. Is it fair to say that Mr. Dondero  
 14 did not disclose to you the existence of the  
 15 agreement that we have – as we've defined that  
 16 term prior to the time you signed this letter?  
 17 MS. DANDENEAU: Objection to form.  
 18 A. I don't think I understand the  
 19 question. So, again, you are saying, did  
 20 Mr. Dondero not disclose to me the existence of  
 21 this letter?  
 22 Q. No, I apologize.  
 23 Did Mr. Dondero disclose to you the  
 24 existence of the agreement prior to the time  
 25 you signed this letter on June 3rd, 2019?

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1 WATERHOUSE - 10-19-21  
 2 again, I mean, I haven't looked at ASC 850 in  
 3 quite some time, but, you know, if – if there  
 4 is a control language, you know, ASC 850, would  
 5 that – that section in GAAP would – would  
 6 pick up and define what are related parties.  
 7 So, you know, like I said, if – one  
 8 of the four entities I just described, if – if  
 9 they are in that control definition of ASC 850,  
 10 they would be picked up in 35D.  
 11 Q. Do you – do you have any reason to  
 12 believe that they would be picked up in that  
 13 definition, based on your knowledge and  
 14 experience?  
 15 A. I – I believe that entities  
 16 controlled under GAAP are – are affiliates.  
 17 Q. Okay. Would Mr. Dondero also  
 18 qualify as a related party for purposes of  
 19 Section 35D, to the best of your knowledge?  
 20 A. Yeah, I don't – I don't know. I  
 21 would think – I would have to read the code  
 22 section to see if someone personally – is it  
 23 talking about related parties. So, look, if  
 24 your own in control, yeah, I mean, I would have  
 25 to read the section.

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1 WATERHOUSE - 10-19-21  
 2 Q. To the best of your knowledge, was  
 3 the existence of the agreement ever disclosed  
 4 to PwC?  
 5 A. I'm not – I'm not aware.  
 6 Q. Do you recall if the agreement was  
 7 ever disclosed in Highland's audited financial  
 8 statements?  
 9 A. I don't – I don't remember if it  
 10 was in every Highland's audited financial  
 11 statements during my tenure. We would have to  
 12 read the financial statements to see what was  
 13 disclosed, but I'm not – I mean, as I sit here  
 14 today, I'm not aware.  
 15 Q. That is all I'm asking for.  
 16 A. I'm not aware.  
 17 Q. Can we go to the next page, please,  
 18 and look at 36. 36 says, we have disclosed to  
 19 you the identity of the partnership's related  
 20 party relationships and all the related party  
 21 relationships and transactions of which we are  
 22 aware.  
 23 Do you see that?  
 24 A. Yes.  
 25 Q. To the best of your knowledge, as of

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1 WATERHOUSE - 10-19-21  
 2 Q. And do you understand – do you have  
 3 an understanding that PwC wanted to know that  
 4 as of the date of the audit whether any  
 5 material changes had occurred since the end of  
 6 the fiscal year, using the definition of  
 7 materiality that is in this particular  
 8 management representation letter?  
 9 A. It – it is – it is – it is a –  
 10 it is as described. It is just a poorly worded  
 11 question, so it is hard for me to say yes.  
 12 Q. If I asked you this, I apologize,  
 13 but did you ever learn when the agreement was  
 14 entered into?  
 15 A. I don't – I don't – like I said  
 16 before, I don't know or have any details of the  
 17 agreement.  
 18 Q. Okay. Did you ever ask anybody when  
 19 the agreement was entered into?  
 20 A. I did not.  
 21 Q. Let's look at the audited financial  
 22 statements. We will put up on the screen a  
 23 document that has been premarked as Exhibit 34.  
 24 (Exhibit 34 marked.)  
 25 MS. DANDENEAU: And again, if Ms. La

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1 WATERHOUSE - 10-19-21  
 2 June 3rd, 2019, did Highland disclose to PwC  
 3 the identity of the partnership's related  
 4 parties and all the related party relationships  
 5 and transactions of which it was aware?  
 6 A. I mean, I can speak for myself as  
 7 signer of this representation letter. I  
 8 disclosed what – what, you know, what –  
 9 what – what I knew. Sorry, look, yes, so I –  
 10 I disclosed what I knew.  
 11 Q. Okay. Can we go to page 419. Do  
 12 you see at the end there is a reference to  
 13 events that occurred since the end of the  
 14 fiscal year and the date of the letter?  
 15 A. Yes.  
 16 Q. And were you aware of that – of  
 17 that provision of the management representation  
 18 letter before you signed the document?  
 19 A. Yes.  
 20 Q. Do you have an understanding as to  
 21 why PwC asked for that confirmation of that  
 22 particular part of the management  
 23 representation letter?  
 24 A. It is – it is – it is just – it  
 25 is a typical audit request.

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1 WATERHOUSE - 10-19-21  
 2 Canty could please put that in the chat  
 3 room, that would be great.  
 4 MR. MORRIS: I will assure you we  
 5 will put every document in the chat room.  
 6 Q. Now, I'm just going to ask you  
 7 questions that are related to the provisions of  
 8 this report that concern the affiliate loans,  
 9 but again, Mr. Waterhouse, if there is any part  
 10 of the document that you need to see or that  
 11 you think you might need to see in order to  
 12 refresh your recollection to answer any of my  
 13 questions, will you let me know that?  
 14 A. Yes.  
 15 Q. Because this is a pretty lengthy  
 16 document, but do you see that the cover page  
 17 here is the Highland consolidated financial  
 18 statements for the period ending December 31st,  
 19 2018?  
 20 A. Yes.  
 21 Q. If we can go to – I think it is the  
 22 next one, looking for PwC's signature line.  
 23 MS. CANTY: I'm sorry, John, did you  
 24 say something?  
 25 MR. MORRIS: Yes, can we turn the

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1 WATERHOUSE - 10-19-21  
 2 page. I think it is 215. Yes, stop right  
 3 there, just above – I'm sorry, I want to  
 4 see just the date of the report.  
 5 Q. Okay. Do you see at the bottom of  
 6 that page there, Mr. Waterhouse,  
 7 PricewaterhouseCoopers has signed this audit  
 8 report?  
 9 A. Yes, I see their signature.  
 10 Q. Okay. And it is the dated same day  
 11 as your management representation letter; is  
 12 that right?  
 13 A. It is – yes, it is the same day.  
 14 Q. Was that the practice to sign the  
 15 management representation letter on the same  
 16 day that the audit report was signed?  
 17 A. Yes, that is typical in every audit.  
 18 Q. Can we just scroll down to the  
 19 balance sheet on the next page.  
 20 Do you see that there is a line  
 21 there that says, Notes and Other Amounts Due  
 22 from Affiliates?  
 23 A. Yes.  
 24 Q. Does that line, to the best of your  
 25 knowledge, include the amounts that were due

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1 WATERHOUSE - 10-19-21  
 2 any of the promissory notes issued by an  
 3 affiliate or Mr. Dondero would have been  
 4 included?  
 5 MS. DANDENEAU: Objection to form.  
 6 A. Sorry, am I aware of any asset of an  
 7 affiliate being included –  
 8 Q. That – let me – let me try again.  
 9 Do you see there is a number of  
 10 different assets that are described on this  
 11 balance sheet?  
 12 A. Yes.  
 13 Q. One of the assets that is described  
 14 is Notes and Other Amounts Due from Affiliates;  
 15 right?  
 16 A. Yes.  
 17 Q. And it is reasonable to conclude  
 18 that the notes from the affiliates and  
 19 Mr. Dondero are included in that line item;  
 20 right?  
 21 A. Yes, based on this description.  
 22 Again, I would want to see a build of this to  
 23 100 percent confirm, but based on the  
 24 description, the asset description, it is – it  
 25 is likely.

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1 WATERHOUSE - 10-19-21  
 2 under the affiliate under the notes signed by  
 3 the affiliates and Mr. Dondero?  
 4 MR. RUKAVINA: Objection to the  
 5 extent that calls for a legal conclusion.  
 6 A. I mean, I would want to see the  
 7 detail and the build to this \$173,398,000, but,  
 8 yes, I mean, if – if – given what we  
 9 discussed before, you know, it – it should  
 10 capture that.  
 11 Q. And – and while you were the CFO of  
 12 Highland, were all notes held by Highland that  
 13 were issued by an affiliate or Mr. Dondero  
 14 carried as assets on Highland's balance sheets?  
 15 MS. DANDENEAU: Objection to form.  
 16 MS. DEITSCH-PEREZ: Object to form.  
 17 A. I don't – I don't know how else  
 18 they would be carried.  
 19 Q. Okay. Can you think of any – are  
 20 you aware of any promissory note issued by an  
 21 affiliate or Mr. Dondero that was not carried  
 22 on Highland's audited financial balance sheets?  
 23 A. I'm – I'm – I'm not aware.  
 24 Q. Okay. Are you aware of any category  
 25 of asset on Highland's balance sheet in which

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 2 Now, does that mean absolute? I  
 3 don't know.  
 4 Q. Do you have any reason to believe  
 5 that the promissory notes would have been  
 6 carried on the balance sheet in a category  
 7 other than Notes and Other Amounts Due from  
 8 Affiliates?  
 9 A. If they were deemed – no. If they  
 10 were deemed an affiliate, you know, under GAAP,  
 11 they should be carried in that line.  
 12 Otherwise, it would go into another line.  
 13 Q. Okay. And do you see the total  
 14 asset base as of December 31st, 2018, was  
 15 approximately \$1.04 billion?  
 16 A. Yes.  
 17 Q. Is my math correct that the Notes  
 18 and Other Amounts Due from Affiliates  
 19 constituted approximately 17 percent of  
 20 Highland's assets as of the end of 2018?  
 21 A. Well, so how are you defining  
 22 Highland?  
 23 Q. Highland Capital Management, L.P.,  
 24 the entity that this audit is subject to – or  
 25 the subject of.

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 2 A. On a consolidated or unconsolidated  
 3 basis?  
 4 Q. I'm looking at the balance sheet.  
 5 It is a consolidated balance sheet. Okay?  
 6 Does the Notes and Other Amounts Due  
 7 from Affiliates constitute approximately  
 8 17 percent of the total assets of Highland  
 9 Capital Management, L.P., on a consolidated  
 10 basis?  
 11 MS. DANDENEAU: Objection to form.  
 12 A. I don't have a calculator in front  
 13 of me but I will take your math, if you are  
 14 taking the 173 divided by the billion.  
 15 Q. Okay.  
 16 A. If that is accurate, yes. But,  
 17 again, on a consolidated basis.  
 18 Q. And on an unconsolidated basis the  
 19 percentage would be higher; correct?  
 20 A. I – no. I don't know.  
 21 Q. Well, okay. That is fair.  
 22 MR. MORRIS: Can we turn to  
 23 page 241, please.  
 24 Q. Do you see that this is a section of  
 25 the audit report that is entitled Notes and

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 2 of the financial statements are – the purpose  
 3 is to disclose any material items in relation  
 4 to that balance sheet line item.  
 5 Q. Okay. And all of the information,  
 6 to the best of your knowledge, that is set  
 7 forth in this section of the audit report was  
 8 provided by Highland; correct?  
 9 A. Yes, it would have been provided by  
 10 the corporate accounting team.  
 11 Q. Okay. And the corporate accounting  
 12 team, did that team report to you in the  
 13 organizational structure?  
 14 A. Yes.  
 15 Q. And did you have any concerns about  
 16 the controls that were in place to make sure  
 17 that the information provided with respect to  
 18 Notes and Other Amounts Due from Affiliates was  
 19 accurate and complete?  
 20 MS. DANDENEAU: Objection to form.  
 21 A. Not that I recall.  
 22 Q. Okay. Do you recall ever being  
 23 concerned that any portion of the Notes and  
 24 Other Amounts Due from Affiliates in any audit  
 25 report was inaccurate, incomplete, or not

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 2 Other Amounts Due from Affiliates?  
 3 A. Sorry, I can't see the – the –  
 4 Q. It is at the top.  
 5 A. Notes and Other Amounts Due from  
 6 Affiliates, yes, I see that. I don't – I  
 7 don't have a page number, but I'm on a page  
 8 that says at the top: Notes and Other Amounts  
 9 Due from Affiliates.  
 10 Q. Okay. And that is the same title of  
 11 the line item on the balance sheet that we just  
 12 looked at; right? Notes and Other Amounts Due  
 13 from Affiliates?  
 14 A. Yes.  
 15 Q. And is it your understanding, based  
 16 on your experience and knowledge as the CFO,  
 17 that this is the section of the narrative that  
 18 ties into the line item that we just looked at?  
 19 A. Yes.  
 20 Q. And is this section of the audit  
 21 report intended to describe and disclose all of  
 22 the material facts concerning the Notes and  
 23 Other Amounts Due from Affiliates?  
 24 MS. DANDENEAU: Objection, form.  
 25 A. This – these notes – these notes

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 2 reliable?  
 3 A. I didn't – I had concerns about,  
 4 you know, like I talked about before, of there  
 5 were – there were potentially issues in the  
 6 control environment. But as far as it relates  
 7 to the audited financial statements, any – the  
 8 team would work with the auditors to disclose  
 9 all – all notes in Highland's possession.  
 10 And any – any notes that were  
 11 deemed material by the auditor, right, these  
 12 were disclosed in these – in this section, you  
 13 know, in – in the notes to the consolidated  
 14 financial statements as you presented.  
 15 Q. Do you recall ever having a  
 16 conversation with anybody at any time  
 17 concerning the accuracy of the section of audit  
 18 reports that relates to Notes and Other Amounts  
 19 Due from Affiliates?  
 20 MS. DANDENEAU: Objection to form.  
 21 A. You know, as – as – I didn't have  
 22 direct conversations with  
 23 PricewaterhouseCoopers as I had, you know –  
 24 I – I had the team that managed this.  
 25 Again, I wasn't anywhere chose to

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 2 being the point person of this audit. And I  
 3 can't recall, you know, when – you know, I  
 4 don't even know if I was ever the point person  
 5 during my tenure as CFO.  
 6 I don't know if PwC had any concerns  
 7 when they were performing those audit  
 8 procedures. They may have and they may have –  
 9 and it may not have been communicated to me. I  
 10 don't know.  
 11 MR. MORRIS: All right. I move to  
 12 strike.  
 13 Q. And I'm going to ask you to listen  
 14 carefully to my question.  
 15 Did you – do you recall ever having  
 16 a conversation with anybody at any time  
 17 concerning the accuracy of the reporting  
 18 provided in the audited financial statement on  
 19 the topic of Notes and Other Amounts Due?  
 20 MS. DANDENEAU: Objection to form.  
 21 A. I don't recall for this, but that  
 22 doesn't mean that it didn't exist.  
 23 Q. Okay. But you have no reason to  
 24 believe, as you sit here right now, that you  
 25 ever discussed with anybody concerns over the

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 2 A. – Highland's responsibility.  
 3 Highland's responsibility.  
 4 Q. Who, at Highland, was responsible  
 5 for drafting this section of the audit report?  
 6 A. I – I don't know the answer to  
 7 that. Again, there was a team who worked on  
 8 this. And I don't know, you know, whether it  
 9 was the staff or the manager.  
 10 Again, this is where I let the teams  
 11 manage. And, you know, there may be a  
 12 corporate accountant who worked on this. I  
 13 just – you know, I wasn't part of that process  
 14 to give that person experience. I don't know.  
 15 Q. Do you recall having any  
 16 communications with anybody at any time  
 17 concerning this section of the report?  
 18 A. Yeah, I don't recall.  
 19 Q. Do you recall whether you ever told  
 20 anybody at any time that any aspect of this  
 21 section of the report was inaccurate or  
 22 incomplete?  
 23 A. I don't recall.  
 24 Q. As you sit here today, do you have  
 25 any reason to believe that this section of the

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 2 accuracy of the section of the audit reports  
 3 called Notes and Other Amounts Due from  
 4 Affiliates; correct?  
 5 MS. DANDENEAU: Object to the form.  
 6 MS. DEITSCH-PEREZ: Objection to  
 7 form.  
 8 A. I don't recall having any  
 9 conversations. But, again, I mean, this is –  
 10 this is two years ago.  
 11 Q. I'm just asking for your  
 12 recollection, sir.  
 13 A. Yes.  
 14 Q. If you don't recall, this will –  
 15 A. Yeah.  
 16 Q. (Overspeak) – if you don't  
 17 recall –  
 18 A. Yeah, I don't – I don't recall.  
 19 Q. Do you know who was responsible for  
 20 drafting the audit report?  
 21 A. Are you asking the actual Highland  
 22 employee responsible? I mean, it was  
 23 Highland's responsibility, so, I mean, that  
 24 is –  
 25 Q. Right.

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1 WATERHOUSE - 10-19-21  
 2 audit report is incomplete or inaccurate in any  
 3 way?  
 4 And I'm happy to give you a moment  
 5 to – to look at it, if you would like.  
 6 MS. DANDENEAU: Objection to form.  
 7 MS. DEITSCH-PEREZ: Same.  
 8 A. I mean, I would have to look at – I  
 9 would have to look at the bill to the note  
 10 schedule to make sure I know you presented me  
 11 with materiality, but again, there might be a  
 12 note as of 12/31/18 that somehow was – was  
 13 under materiality not disclosed. I don't – I  
 14 don't know. I would need more information.  
 15 Q. Okay. But without more information,  
 16 you have no reason to believe anything this  
 17 section is inaccurate; correct?  
 18 MS. DANDENEAU: Objection to form.  
 19 A. I don't. I mean, you know, this was  
 20 part of the audit.  
 21 Q. Thank you. Now, you will see if we  
 22 could scroll just a little bit more that each  
 23 of the first five paragraphs concerns  
 24 specifically the four affiliates that we've  
 25 been discussing and Mr. Dondero.

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 2 MR. MORRIS: If we could go the  
 3 other way, La Asia. We don't need Okada.  
 4 We're going to have to thread the needle.  
 5 Okay. Good, perfect.  
 6 Q. Do you see those five paragraphs  
 7 certain the four affiliates and Mr. Dondero as  
 8 we've been referring to today?  
 9 A. Yes.  
 10 Q. Okay. And do you see at the end of  
 11 every paragraph it states, quote: A fair value  
 12 of a partnership's outstanding notes receivable  
 13 approximates the carrying value of the notes  
 14 receivable?  
 15 A. Yes, I see that.  
 16 Q. Do you have an understanding of what  
 17 that means?  
 18 A. Yes.  
 19 Q. What is your understanding of that  
 20 sentence?  
 21 A. It is the -- again, the -- the fair  
 22 value, right, which is -- which is what the --  
 23 what Highland could sell that asset for. This  
 24 statement is comparing the fair value of the  
 25 notes to the carrying value, so the carrying

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 2 Q. Is that the carrying value or the  
 3 fair value?  
 4 A. That would be the carrying value --  
 5 Q. And is the last --  
 6 A. -- in my opinion.  
 7 Q. Okay. And it is in your opinion as  
 8 the chief financial officer of Highland during  
 9 the period of time that you described; right?  
 10 It is an educated opinion?  
 11 A. I'm reading this at face value. I'm  
 12 taking that as that is carrying value.  
 13 Q. Okay. And does the last sentence  
 14 say that the carrying value is roughly  
 15 approximate to the fair market value?  
 16 MS. DANDENEAU: Objection to form.  
 17 MS. DEITSCH-PEREZ: Objection, form.  
 18 A. Again, this note to the financial  
 19 statement is specific to notes and other  
 20 amounts due from affiliates.  
 21 Q. Correct.  
 22 A. If the interest component is  
 23 reported elsewhere on the balance sheet, you  
 24 know, it -- it -- it could be off. Again, I  
 25 don't have the detail. I don't know, but yes,

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1 WATERHOUSE - 10-19-21  
 2 value is the line item that you showed me  
 3 earlier that is in Notes and Other Amounts Due  
 4 from Affiliates.  
 5 Q. Okay. Is another way to say this is  
 6 that the fair market value of the notes equals  
 7 the principal amount and -- withdrawn.  
 8 Is the fair way to interpret this  
 9 that the fair market value of the notes equals  
 10 all remaining unpaid principal and interest due  
 11 under the notes?  
 12 MS. DANDENEAU: Object to the form.  
 13 MS. DEITSCH-PEREZ: Objection, form.  
 14 A. I don't know the answer to that,  
 15 because I don't recall where -- where any --  
 16 where -- in what line item was the interest  
 17 component reported.  
 18 Q. All right. Well, if we look in this  
 19 audit report, you will see in the middle of the  
 20 first paragraph, for example, it states that as  
 21 of December 31st, 2018, total interest and  
 22 principal due on outstanding promissory notes  
 23 was approximately \$5.3 million.  
 24 Do you see that?  
 25 A. I do.

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 2 look, I mean, if you -- I mean, if you are  
 3 saying the 5.3 million is in the notes and  
 4 other amounts due from affiliates, then the  
 5 last statement is saying the fair value  
 6 approximates 5.3 million. That is what that  
 7 last sentence is saying.  
 8 Q. Do you see in the middle of the  
 9 first paragraph -- not in the middle, the next  
 10 to last sentence there is a statement that the  
 11 partnership will not demand payment on amounts  
 12 that exceed HCMFA's excess cash availability  
 13 prior to May 31st, 2021.  
 14 Do you see that?  
 15 A. I do.  
 16 Q. Do you know when Highland agreed not  
 17 to demand payment as described in that  
 18 sentence?  
 19 A. I don't know specifically.  
 20 Q. Do you know why Highland agreed not  
 21 to demand payment on HCMFA's notes until May  
 22 2021?  
 23 A. Yes.  
 24 Q. Why was that decision made?  
 25 A. You know, well, it -- it -- that

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1 WATERHOUSE - 10-19-21  
 2 decision was made as to not put HCMFA into a  
 3 position where it didn't have sufficient assets  
 4 to pay for the demand note.  
 5 Q. And at the time the agreement was  
 6 entered into, pursuant to which the partnership  
 7 wouldn't demand payment, did HCMFA have  
 8 insufficient assets to satisfy the notes if a  
 9 demand had been made?  
 10 MS. DANDENEAU: Objection to form.  
 11 A. I don't have HCMFA's financial  
 12 statements in front of me as of 12/31/18.  
 13 Q. Was there a concern that HCMFA would  
 14 be unable to satisfy its demands under the  
 15 notes if demand was made?  
 16 MS. DANDENEAU: Objection to form.  
 17 A. Well, there is – I don't recall –  
 18 I mean, there is something, right, in place to  
 19 basically not demand payment until May 31, 2021  
 20 as detailed here.  
 21 Q. And who made the decision to enter  
 22 into – who made the decision on behalf of  
 23 Highland not to demand payment until May 31st,  
 24 2021?  
 25 A. I'm trying to remember. I don't

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 2 Q. And did you and Mr. Dondero discuss  
 3 HCMFA's ability to satisfy the notes if a  
 4 demand was made at the time this agreement was  
 5 entered into?  
 6 MS. DANDENEAU: Objection to form.  
 7 A. I don't – I don't – I don't recall  
 8 having a specific conversation, if I did, or –  
 9 or David Klos.  
 10 Q. Okay. I'm just asking if you recall  
 11 any conversations that you had.  
 12 A. I don't recall.  
 13 Q. Okay. Do you know why Highland  
 14 loaned the money to HCMFA that is the subject  
 15 of the notes described in this paragraph?  
 16 A. I don't remember specifically why  
 17 5.3 million was loaned. I mean, I – it would  
 18 have to be put in the context.  
 19 Q. Do you have any recollection at all  
 20 as to why Highland ever loaned any money to  
 21 HCMFA?  
 22 A. Yes.  
 23 MS. DANDENEAU: Objection to form.  
 24 Q. What do you remember about that?  
 25 A. There was a Highland Global

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 2 remember exactly – I don't remember if it was  
 3 myself or – or Jim Dondero who – who – there  
 4 was – there was something signed, from what I  
 5 recall, that – that – that backed up this  
 6 line item in the – in the notes I'm – look,  
 7 I'm, I'm –  
 8 Q. We will get to that.  
 9 A. You –  
 10 Q. I'm just –  
 11 A. You have – I mean –  
 12 Q. We're going to give that to you.  
 13 I'm going to give that to you.  
 14 A. You – you – you have all the  
 15 documents. I don't have the documents, and  
 16 that is what makes it so hard. I don't have  
 17 any documents to prepare for this deposition;  
 18 right? You have all – I don't – I don't – I  
 19 don't remember, but, you know, again, it would  
 20 probably be myself or Jim.  
 21 Q. Do you know if Highland received  
 22 anything in return for its agreement not to  
 23 make a demand for two years?  
 24 A. I don't – I don't think it referred  
 25 anything.

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 2 Allocation Fund, which was a – a fund managed  
 3 by Highland Capital Management Fund Advisors.  
 4 There was a – we – I'm just telling you,  
 5 there was – there was – there was a – a  
 6 ultimately a NAV error found in this fund while  
 7 it was an open-ended fund and, you know, there  
 8 were amounts owed by the advisor in – in  
 9 relation to that NAV error.  
 10 There were also, for the same fund,  
 11 that same fund was ongoing an  
 12 open-end-to-close-end conversion, and as part  
 13 of that proposal, shareholders who voted for  
 14 the conversion received compensation from the  
 15 advisor.  
 16 Q. All right. Now, the events that  
 17 you're describing occurred in the spring of  
 18 2019; right?  
 19 A. These started back – I think, I  
 20 mean –  
 21 Q. I apologize.  
 22 A. – that – I mean, the answer to  
 23 that is no.  
 24 Q. I apologize, the loans that were  
 25 made in connection with the events that you're



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 2 describing occurred in May 2019; right?  
 3 MR. RUKAVINA: Objection to the  
 4 extent that calls for a legal conclusion.  
 5 A. I don't recall specifically what  
 6 amounts of money were moved when, for what  
 7 purpose.  
 8 Q. Okay. Fair enough. Going to the  
 9 next paragraph, do you recall that NexPoint  
 10 Advisors had obtained a number of loans from  
 11 Highland, and they rolled up those loans into  
 12 one note in approximately 2017?  
 13 A. This is for NexPoint Advisors?  
 14 Q. Yes.  
 15 A. I – I mean, I don't – I don't  
 16 recall the NexPoint Advisors loan being a  
 17 roll-up loan, but –  
 18 Q. Do you know why?  
 19 A. But, look, if you have documents  
 20 that show – I mean, look, I just don't recall.  
 21 Q. Okay. That is fair. Do you know  
 22 why – do you have any recollection as to why  
 23 Highland loaned money to NexPoint?  
 24 A. Yes.  
 25 Q. Why did High – why do you recall –

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 2 Do I have that right?  
 3 A. Yes.  
 4 Q. How about HCRE? Do you know why  
 5 HCRE borrowed money from Highland?  
 6 A. I don't remember specifically.  
 7 Q. Do you remember generally?  
 8 A. Generally, yeah – I mean, yes.  
 9 Q. Can you tell me your general  
 10 recollection as to why Highland loaned money to  
 11 HCRE?  
 12 A. For – for – for investment  
 13 purposes.  
 14 Q. So HCRE made the investment and it  
 15 obtained a loan, or loans, from Highland in  
 16 order to finance that investment or those  
 17 investments.  
 18 Do I have that right?  
 19 A. I mean, I – you know, generally.  
 20 Q. Okay. How about Highland Management  
 21 Services, Inc.?  
 22 Do you have any recollection as to  
 23 why HCMS borrowed money from Highland?  
 24 A. Generally.  
 25 Q. What is your general recollection as

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1 WATERHOUSE - 10-19-21  
 2 what is the reason you recall Highland lending  
 3 money to NexPoint?  
 4 A. I mean, I was just – I just – I  
 5 just recall. I mean, I just – I don't  
 6 remember why.  
 7 Q. I understand. And I'm asking you if  
 8 you recall –  
 9 A. Oh, why – I thought you say –  
 10 NexPoint Advisors was launching a fund which  
 11 is – I believe that the legal name is NexPoint  
 12 Capital, Inc. And it – it provided a  
 13 co-invest into that fund.  
 14 And, from what I remember, the –  
 15 the – that NexPoint borrowed money from  
 16 Highland at the time to make that co-invest.  
 17 Q. So this was an investment that  
 18 NexPoint was required to make; is that right?  
 19 MS. DANENEAU: Objection to form.  
 20 A. I don't know if it was required to  
 21 make, I don't recall that, or if it just made  
 22 it.  
 23 Q. Okay. But your recollection is that  
 24 NexPoint made an investment and they borrowed  
 25 money from Highland to finance the investment.

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1 WATERHOUSE - 10-19-21  
 2 to why HCMS borrowed money from Highland?  
 3 A. For – for investment purposes.  
 4 Q. So it is the same thing, HCMS wanted  
 5 to make investments and it borrowed money from  
 6 Highland in order to finance those investments;  
 7 is that right?  
 8 A. I mean, yes, generally. I mean, I  
 9 can't – I don't – on the services, there –  
 10 there are several loans in these schedules.  
 11 You know, I can't remember why every single one  
 12 of these were made, but I would say, yeah, I  
 13 mean, generally.  
 14 Q. Okay. I appreciate that.  
 15 MR. MORRIS: Let's go to the page  
 16 with Bates No. 251. La Asia, are you  
 17 there?  
 18 MS. CANTY: Sorry, John. It went  
 19 out for a minute. Can you say that again.  
 20 I don't know what is going on.  
 21 MR. MORRIS: The page with Bates  
 22 No. 251, can we go to that.  
 23 MS. CANTY: Yes, sorry.  
 24 MR. MORRIS: Keep going to the  
 25 bottom. Yeah, there you go.

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 2 Q. Do you see, Mr. Waterhouse, that  
 3 there is a section there called Subsequent  
 4 Events?  
 5 A. I do.  
 6 Q. And does this relate to the last  
 7 sentence above the signature line on the  
 8 management representation letter that we talked  
 9 about earlier where you made the representation  
 10 that you disclosed subsequent events?  
 11 A. I mean, it relates to it, but not in  
 12 its entirety.  
 13 Q. Okay.  
 14 MR. MORRIS: If we can scroll up to  
 15 capture the entirety of this section right  
 16 here.  
 17 Q. And what do you mean by that, sir?  
 18 MR. MORRIS: Yeah, right there.  
 19 Perfect.  
 20 A. There are -- there are different  
 21 subsequent events in -- under GAAP. So there  
 22 are -- and -- and -- so what we see in the  
 23 notes to the financial statements are one type  
 24 of subevent.  
 25 Q. Okay. And -- and would the type of

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 2 if -- you know, what -- if that 7.4 million was  
 3 solely attributable to the NAV error.  
 4 Q. Okay. But there is no question that  
 5 Highland told PricewaterhouseCoopers that over  
 6 the course of 2019 HCMFA issued promissory  
 7 notes to the partnership in the aggregate  
 8 amount of \$7.4 million; correct?  
 9 A. In the course of the audit, we would  
 10 have produced all promissory notes in our  
 11 possession, including the ones that are  
 12 detailed here.  
 13 Q. Do you recall that you signed the  
 14 two promissory notes that are referenced in  
 15 that provision?  
 16 MS. DANDENEAU: Objection to form.  
 17 A. I didn't recall initially but I've  
 18 been reminded.  
 19 Q. Okay. And -- and do you recall that  
 20 those notes are dated May 2nd and May 3rd,  
 21 2019?  
 22 A. Yes.  
 23 Q. So that was just a month before the  
 24 audit was completed; correct?  
 25 A. Yes. I think we had a June 3rd

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 2 subsequent event relating to affiliate loans be  
 3 captured in this section if they were -- if  
 4 they were made after the end of the fiscal year  
 5 and prior to the issuance of the audit report?  
 6 A. Yes, if they were deemed material or  
 7 disclosable.  
 8 Q. Okay. I appreciate that.  
 9 Do you see the next to the last  
 10 entry there? It says, Over the course of 2019  
 11 through the report date, HCMFA issued  
 12 promissory notes to the partnership in the  
 13 aggregate amount of \$7.4 million?  
 14 A. Yes.  
 15 Q. And does that refresh your  
 16 recollection that those are the notes that  
 17 related to the NAV error that you mentioned  
 18 earlier?  
 19 A. I don't -- I don't remember the  
 20 exact. Again, there are -- I mentioned two  
 21 line items; right?  
 22 Q. Yes.  
 23 A. I mean, it was the GAAP conversion  
 24 process plus the -- the NAV error. I don't  
 25 have the details. I don't recall specifically

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 2 date, right, if -- if my memory serves me  
 3 right.  
 4 Q. Yes, I will represent to you that  
 5 your memory is accurate in that regard.  
 6 Did anybody ever instruct you as the  
 7 CFO to correct this statement that we're  
 8 looking at in subsequent events?  
 9 A. So let me understand. You're saying  
 10 when I was CFO at Highland Capital did anyone  
 11 ever ask me to correct the -- over the course  
 12 of 2019 through the report date HCMFA issued  
 13 promissory notes, this statement?  
 14 Q. Right.  
 15 A. Not that I'm aware.  
 16 Q. While you were the CFO of Highland,  
 17 did anybody ever tell you that that sentence  
 18 was wrong?  
 19 A. Not that I'm aware.  
 20 Q. Highland -- withdrawn.  
 21 HCMFA disclosed these notes in its  
 22 own audited financial statements; right?  
 23 MR. RUKAVINA: Objection, form.  
 24 A. I assume that these would be  
 25 material -- if these are material financial

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1 WATERHOUSE - 10-19-21  
 2 statements, yes, they – they – they should be  
 3 and they were likely disclosed.  
 4 Q. Now, there is no statement  
 5 concerning the 2019 notes about the forbearance  
 6 that we looked at in the affiliated note  
 7 section of the report; right?  
 8 MS. DANDENEAU: Objection to form.  
 9 Q. I'll withdraw. That was bad.  
 10 Do you recall when we were looking  
 11 at the paragraph concerning HCMFA earlier it  
 12 had that disclosure about the agreement whereby  
 13 Highland wouldn't ask for demand on the – on  
 14 the HCMFA notes?  
 15 A. Yes.  
 16 Q. That forbearance disclosure is not  
 17 made with respect to the 2019 notes; right?  
 18 A. Not – look, not that I can recall,  
 19 unless – unless it was done at a subsequent  
 20 day.  
 21 Q. Right. And it is not in the  
 22 subsequent event section that we're looking at  
 23 right now where the 2019 notes are described;  
 24 right?  
 25 A. Right. But this is through

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1 WATERHOUSE - 10-19-21  
 2 we looked at earlier for Highland?  
 3 A. I would imagine I would have been  
 4 asked to. I don't recall if I did.  
 5 Q. Do you recall ever being asked by an  
 6 auditor to sign a management representation  
 7 letter and then not doing it?  
 8 A. No.  
 9 MR. MORRIS: Can we just scroll down  
 10 again. I just want to see the date of the  
 11 document.  
 12 A. I mean, let me – you know, there  
 13 are different versions to management  
 14 representation letters I will qualify.  
 15 Yes, there are certain – from time  
 16 to time auditors can make representations  
 17 that – in the rep letter that is being  
 18 proposed that are inaccurate or out of scope or  
 19 things like that and they've asked for  
 20 signature.  
 21 In that context, yes. I mean, you  
 22 know – I mean, if I have been asked to sign  
 23 and make those representations and those  
 24 representations are invalid, yes, I would not,  
 25 I mean, I – I wouldn't sign that.

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1 WATERHOUSE - 10-19-21  
 2 June 3rd. It could have been done on June 4th.  
 3 I don't – I don't – I don't recall.  
 4 Q. Okay.  
 5 MR. MORRIS: Can we put up on the  
 6 screen the HCMFA audit report. And while  
 7 we're –  
 8 MS. DANDENEAU: What exhibit is  
 9 this?  
 10 MR. MORRIS: La Asia, what number is  
 11 that?  
 12 MS. CANTY: 45.  
 13 MR. MORRIS: So this will be marked  
 14 as Exhibit 45.  
 15 (Exhibit 45 marked.)  
 16 MS. CANTY: Yeah, and I will put it  
 17 in the chat.  
 18 MS. DANDENEAU: Thank you.  
 19 Q. Okay. All right. Do you see that  
 20 this is the consolidated financial statements  
 21 for HCMFA for the period ending 12/31/18?  
 22 A. Yes.  
 23 Q. As the treasurer of HCMFA at the  
 24 time, did you have to sign a management  
 25 representation letter similar to the one that

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. PricewaterhouseCoopers served  
 3 as HCMFA's outside auditors as well; correct?  
 4 A. Yes.  
 5 Q. Do you see that this audit report is  
 6 signed on June 3rd, 2019, just like the  
 7 Highland audit report?  
 8 A. That is correct.  
 9 Q. And did the process of – of  
 10 preparing HCMFA's audit report, was that the  
 11 same process that Highland followed when it did  
 12 its audit report at this time?  
 13 A. I mean, it is a different entity.  
 14 There are different assets. You know, it –  
 15 it – it is – as you saw, Highland's  
 16 financials are on a consolidated basis. This  
 17 is different, so it is under the same control  
 18 environment and team.  
 19 Q. Okay. I appreciate that. So the  
 20 same control environment and team participated  
 21 in the preparation of the audit for Highland  
 22 and for HCMFA at around the same time; correct?  
 23 A. Yes.  
 24 MR. MORRIS: Can we go to page 17 of  
 25 the report. I don't have the Bates number.

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Do you see that just like  
 3 Highland's audited financial report, HCMFA's  
 4 audited financial report also has a section  
 5 related to subsequent events?  
 6 A. Yes.  
 7 Q. And am I reading this correctly that  
 8 just as Highland had done, HCMFA disclosed in  
 9 its audited financial report a subsequent event  
 10 that related to the issuance of promissory  
 11 notes to Highland in the aggregate amount of  
 12 \$7.4 million in 2019?  
 13 A. That is what I see in the report.  
 14 Q. And you were the treasurer of HCMFA  
 15 at the time; right?  
 16 A. Yes, to the best of my knowledge.  
 17 Q. And did anybody ever tell you prior  
 18 to the time of the issuance of this audit  
 19 report that that sentence relating to HCMFA's  
 20 2019 notes was inaccurate or wrong in any way?  
 21 A. Not that I recall.  
 22 Q. As you sit here right now, has  
 23 anybody ever told you that that sentence is  
 24 inaccurate or wrong in any way?  
 25 A. Not that I recall.

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1 WATERHOUSE - 10-19-21  
 2 Q. All right. So I don't know if you  
 3 have seen this before, sir. Do you see that  
 4 this is a complaint against HCMFA?  
 5 A. Yes, I am looking at it on the  
 6 screen.  
 7 Q. Okay. And have you ever seen this  
 8 document before?  
 9 A. I went through some of these  
 10 documents with my counsel here yesterday.  
 11 MR. MORRIS: All right. Can we go  
 12 to Exhibit 1 of this document.  
 13 Q. Do you see Exhibit 1 is a  
 14 \$2.4 million promissory note back in 2019?  
 15 A. Yeah, I found it in the book. Yes,  
 16 I have it here in front of me.  
 17 Q. And this is a demand note, right, if  
 18 you look at Paragraph 2?  
 19 A. Yes.  
 20 Q. And this is a note where the maker  
 21 is HCMFA, and Highland is the payee; right?  
 22 A. Yes.  
 23 MR. MORRIS: And if we can scroll  
 24 down, can we just see Mr. Waterhouse's  
 25 signature.

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1 WATERHOUSE - 10-19-21  
 2 Q. I apologize if I asked you this  
 3 already, but has anybody ever told you at any  
 4 time that you are not authorized to sign the  
 5 promissory notes that are the subject of the  
 6 sentence we're looking at?  
 7 A. Not that I recall.  
 8 Q. Did anybody ever tell you at any  
 9 time that you had made a mistake when you  
 10 signed the promissory notes that are the  
 11 subject of this sentence?  
 12 A. Say that again. Did anyone ever say  
 13 that I made a mistake?  
 14 Q. Let me ask the question again.  
 15 Did anybody ever tell you at any  
 16 time that you made a mistake when you signed  
 17 the two promissory notes in Highland's favor on  
 18 behalf of HCMFA in 2019?  
 19 A. Not that I recall.  
 20 MR. MORRIS: Let's just look at the  
 21 promissory notes quickly. Can we please  
 22 put up Document Number 1, and so this is in  
 23 the pile that y'all have. We'll just go  
 24 for a few more minutes and we can take our  
 25 lunch break.

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1 WATERHOUSE - 10-19-21  
 2 Q. Is that your signature, sir?  
 3 A. Yes, it is.  
 4 Q. And did you sign this document on or  
 5 around May 2nd, 2019?  
 6 A. I don't recall specifically signing  
 7 this, but this is my signature.  
 8 Q. Okay. And do you recall that  
 9 Highland transferred \$2.4 million to HCMFA at  
 10 or around the time you signed this document?  
 11 A. I don't recall specifically. I  
 12 would want to, as I sit here today, go back and  
 13 confirm that, but again, presumably that --  
 14 that -- that did happen.  
 15 Q. You wouldn't have signed this  
 16 document if you didn't believe that HCMFA  
 17 either received or was going to receive  
 18 \$2.4 million from Highland; is that fair?  
 19 A. I mean, it -- if -- if -- if there  
 20 wasn't a transfer of value, yeah, I mean, you  
 21 know, I would have no reason to -- to sign a  
 22 note.  
 23 Q. And -- and Highland wouldn't have  
 24 given this note to PricewaterhouseCoopers if --  
 25 withdrawn.

<p style="text-align: right;">Page 142</p> <p>1 WATERHOUSE - 10-19-21                  2 HCMFA wouldn't have given this note                  3 to PricewaterhouseCoopers if it hadn't received                  4 the principal value of – of the note in the                  5 form of a loan; correct?                  6 MR. RUKAVINA: Objection, legal                  7 conclusion, speculation and form.                  8 A. Again, we – what we provided to PwC                  9 were, as part of the audit, any promissory                  10 notes executed and outstanding. You know, as a                  11 part of the audit, they, you know, they – they                  12 have copies of all the bank statements,                  13 things – things of that sort.                  14 MR. MORRIS: Okay. Can we go to                  15 Exhibit 2.                  16 (Exhibit 2 marked.)                  17 Q. Do you see that this is a promissory                  18 note dated May 3rd, 2019 in the amount of                  19 \$5 million?                  20 A. Yes.                  21 Q. Do you believe this is also a demand                  22 note if you look at Paragraph 2?                  23 A. Yes.                  24 Q. And do you see that HCMFA is the                  25 maker, and Highland is the payee?</p>	<p style="text-align: right;">Page 143</p> <p>1 WATERHOUSE - 10-19-21                  2 A. Yes.                  3 Q. And if we go to the bottom, can we                  4 just confirm that that is your signature?                  5 A. Yes.                  6 Q. And together these notes are the                  7 notes that are referred to both in Highland and                  8 HCMFA's audited financial reports in the                  9 subsequent event sections; correct?                  10 MS. DANDENEAU: Objection to form.                  11 A. They – they – they totaled                  12 \$7.4 million, so presumably, yes.                  13 Q. Okay. And you were authorized to                  14 sign these two notes; correct?                  15 MR. RUKAVINA: Objection, legal                  16 conclusion.                  17 A. Yeah. I mean, I'm – I was the                  18 officer of – of HCMFA. You know, I – I'm not                  19 the legal expert on – on what that – what                  20 that confers to me or what it doesn't. I mean,                  21 that is my signature on the notes.                  22 Q. And you believed you were authorized                  23 to sign the notes; is that fair?                  24 A. I signed a lot of documents in my                  25 capacity, just because it is operational in</p>
<p style="text-align: right;">Page 144</p> <p>1 WATERHOUSE - 10-19-21                  2 nature. So, you know, to me this was just                  3 another document, to be perfectly honest.                  4 Q. Sir, would you have signed                  5 promissory notes with the principal amount of                  6 \$7.4 million if you didn't believe you were                  7 authorized to do so?                  8 MS. DANDENEAU: Objection to form.                  9 Q. Are you frozen?                  10 A. No. I'm just – you know, it is –                  11 you know, again, I typically don't sign                  12 promissory notes, and I don't recall why I                  13 signed these, but – you know, but I did.                  14 Q. All right. So listen carefully to                  15 my question. Would you have ever signed                  16 promissory notes with a face amount of                  17 \$7.4 million without believing that you were                  18 authorized to do so?                  19 A. No. I mean, I'm – I'm putting my                  20 signature on there, so no.                  21 Q. Okay. And would you have signed two                  22 promissory notes obligating HCMFA to pay                  23 Highland \$7.4 million without Mr. Dondero's                  24 prior knowledge and approval?                  25 MS. DEITSCH-PEREZ: Object to the</p>	<p style="text-align: right;">Page 145</p> <p>1 WATERHOUSE - 10-19-21                  2 form.                  3 A. You know, from – from what I recall                  4 around these notes, you know, I don't recall                  5 specifically Mr. – Mr. Dondero saying to – to                  6 make this a loan.                  7 So my conversation with Mr. Dondero                  8 around the culmination of the NAV error as                  9 related to TerreStar which was a – a – I                  10 think it was a year and a half process. I                  11 don't know, it was a multi-month process, very                  12 laborious, very difficult.                  13 When we got to the end, I had a                  14 conversation with Mr. Dondero on where to, you                  15 know, basically get the funds to reimburse the                  16 fund, and I recall him saying, get the money                  17 from Highland.                  18 Q. And so he told you to get the money                  19 from Highland; is that right?                  20 A. That is what I recall – in my                  21 conversation with him, that is – that is what                  22 I can recall.                  23 Q. Do you know who drafted these notes?                  24 A. I don't.                  25 Q. Did you ask somebody to draft the</p>

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1 WATERHOUSE - 10-19-21  
 2 notes?  
 3 A. I didn't ask – I don't specifically  
 4 ask people to draft notes really. I mean,  
 5 again, you know, the legal group at Highland is  
 6 responsible and has always been responsible for  
 7 drafting promissory notes.  
 8 Q. So based on your – based on the  
 9 practice, you believe that somebody from the  
 10 Highland's legal department would have drafted  
 11 these notes. Do I have that right?  
 12 MS. DEITSCH-PEREZ: Object to the  
 13 form. John, I also asked you for the Word  
 14 versions of these notes so we could look at  
 15 the properties, and you have not provided  
 16 them. Are you intending to?  
 17 MR. MORRIS: No.  
 18 Q. Can you answer my question, sir?  
 19 A. Again, I –  
 20 MS. DANDENEAU: Do you want him to  
 21 repeat it?  
 22 A. Yeah, why don't you repeat it?  
 23 Q. Sure. Mr. Waterhouse, based on the  
 24 practice that you have described in your  
 25 understanding, do you believe that these notes

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1 WATERHOUSE - 10-19-21  
 2 to the legal team, the – you know, we always  
 3 loop in compliance. And compliance – when you  
 4 go to the legal team, compliance is part of  
 5 legal team. They're made aware of – of – of  
 6 these types of transactions.  
 7 Q. And do you believe that you had  
 8 the – withdrawn.  
 9 Did you ever tell Mr. Dondero –  
 10 (inaudible) – did you see those?  
 11 A. Sorry.  
 12 MS. DEITSCH-PEREZ: I did not hear  
 13 the end of that question.  
 14 Q. Did you ever tell Mr. Dondero that  
 15 you signed these two notes?  
 16 A. I don't recall ever – no, I don't  
 17 recall having a conversation with him.  
 18 Q. Did you ever discuss these two notes  
 19 with him at any time?  
 20 A. The conversation, I recall, was what  
 21 I described earlier. And that is the only time  
 22 I recall ever discussing this.  
 23 Q. Okay. But the corporate accounting  
 24 group had a copy of this – of these two notes.  
 25 And pursuant to the audit process, the

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1 WATERHOUSE - 10-19-21  
 2 would have been drafted by somebody in the  
 3 legal department?  
 4 MS. DEITSCH-PEREZ: Object to the  
 5 form.  
 6 A. Yes.  
 7 Q. Okay. And do you know who would  
 8 have instructed – do you have any knowledge as  
 9 to who would have instructed the legal  
 10 department to draft these notes?  
 11 MS. DEITSCH-PEREZ: Object to the  
 12 form.  
 13 A. It was whoever was working – I  
 14 mean, it was likely someone on the team. I  
 15 mean, I don't remember exactly on every note or  
 16 every document, but, again, a lot of these  
 17 things of this nature – they're operational in  
 18 nature – were handled by the team.  
 19 The team knows to – I mean, we  
 20 don't draft documents. We're not lawyers.  
 21 We're not attorneys. It is not what I do or  
 22 accountants do.  
 23 So they are always instructed to go  
 24 and – and go to the legal team to get  
 25 documents like this drafted. Also, when you go

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1 WATERHOUSE - 10-19-21  
 2 corporate accounting group gave the two notes  
 3 to PricewaterhouseCoopers in connection with  
 4 the audit; correct?  
 5 MS. DANDENEAU: Objection to form.  
 6 A. Yes. I mean, that is – yeah, I  
 7 mean, they – unless the legal team can also  
 8 retain copies of items like this. I mean, I  
 9 don't know everything that they would retain as  
 10 well.  
 11 The legal team would also, if they  
 12 had documents as part of audits, turn that over  
 13 to the auditors as well. So it could have been  
 14 the corporate accounting team. It could be  
 15 someone on the legal team.  
 16 Q. All right. So you didn't – you  
 17 didn't draft this note; right?  
 18 A. I – I – I did not.  
 19 Q. But somebody at Highland did; is  
 20 that fair?  
 21 MS. DEITSCH-PEREZ: Object to the  
 22 form.  
 23 A. I don't know. I mean, we can go to  
 24 the legal team. I don't – I'm not sitting  
 25 behind someone in legal. Maybe they went to

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1 WATERHOUSE - 10-19-21  
 2 outside counsel. I have no idea.  
 3 Q. Did you have any reason to believe  
 4 you weren't authorized to sign this note,  
 5 either of these two notes?  
 6 A. I think I have already answered that  
 7 question.  
 8 Q. Okay. You didn't give these notes  
 9 to PricewaterhouseCoopers; correct?  
 10 MS. DANDENEAU: Objection to form.  
 11 A. I don't recall giving these to  
 12 PricewaterhouseCoopers.  
 13 Q. And in the practice that you have  
 14 described, somebody in the corporate accounting  
 15 group would have given these two notes to  
 16 PricewaterhouseCoopers; correct?  
 17 MS. DANDENEAU: Objection to form.  
 18 A. I think I've answered that. I said  
 19 either the corporate accounting team or maybe  
 20 the legal team.  
 21 MR. MORRIS: Okay. Why don't we  
 22 take our lunch break here.  
 23 VIDEOGRAPHER: We're going off the  
 24 record at 1:04 p.m.  
 25 (Recess taken 1:04 p.m. to 1:49 p.m.)

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1 WATERHOUSE - 10-19-21  
 2 certificate before?  
 3 A. I have.  
 4 Q. Do you have a general understanding  
 5 of what an incumbency certificate is?  
 6 A. I have a general understanding.  
 7 Q. What is your general understanding?  
 8 A. You know, those – my general  
 9 understanding is that the incumbency  
 10 certificate basically lists folks that can –  
 11 are like authorized signers.  
 12 Q. Okay. And do you see that this is  
 13 an incumbency certificate for Highland Capital  
 14 Management Fund Advisors, L.P.?  
 15 A. Yes.  
 16 Q. Okay. And if we could scroll down  
 17 just a little bit, do you see that it's dated  
 18 effective as of April 11th, 2019?  
 19 A. Yes, I see that.  
 20 Q. Okay. And is that your signature in  
 21 the middle of the signature block?  
 22 A. Yes, it is.  
 23 Q. And by signing it, did you accept  
 24 appointment as the treasurer of HCMFA effective  
 25 as of April 11th, 2019?

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1 WATERHOUSE - 10-19-21  
 2 VIDEOGRAPHER: We are back on the  
 3 record at 1:49 p.m.  
 4 Q. Mr. Waterhouse, did you speak with  
 5 anybody during the break about the substance of  
 6 this deposition?  
 7 A. I spoke to – to Deb and Michelle.  
 8 Q. About the substance of the  
 9 deposition?  
 10 A. Yes.  
 11 Q. Can you tell me what you talked  
 12 about?  
 13 MS. DANDENEAU: No. We object on  
 14 the basis of privilege.  
 15 Q. Okay. You are going to follow your  
 16 counsel's objection here?  
 17 A. Yes.  
 18 Q. Okay.  
 19 MR. MORRIS: Can we put up on the  
 20 screen Exhibit 35.  
 21 (Exhibit 35 marked.)  
 22 Q. Are you able to see that document,  
 23 sir?  
 24 A. Yes.  
 25 Q. Have you ever seen an incumbency

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1 WATERHOUSE - 10-19-21  
 2 A. Again, I'm not the legal – I don't  
 3 know if this makes me the treasurer or the  
 4 appointment. I don't know – I don't know  
 5 that, so I don't – I don't know if that  
 6 document – again, I think – again, I'm not  
 7 the legal expert. I think isn't there –  
 8 aren't there other legal documents that detail  
 9 who the officers are that could be incorporated  
 10 or things like that? Again, I don't want to  
 11 play armchair attorney here.  
 12 Q. I'm not asking you for a legal  
 13 conclusion. I'm asking you for your knowledge  
 14 and understanding. When you signed this  
 15 document, did you understand that you were  
 16 accepting an appointment as the treasurer of  
 17 HCMFA?  
 18 MS. DANDENEAU: Objection to form.  
 19 MS. DEITSCH-PEREZ: Objection, form.  
 20 A. Again, I don't think this – that  
 21 wasn't my understanding. I don't think this  
 22 makes – this document makes me the treasurer.  
 23 Q. What do you think this document –  
 24 why did you sign this document?  
 25 MS. DEITSCH-PEREZ: Objection to

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1 WATERHOUSE - 10-19-21  
 2 form.  
 3 MR. MORRIS: You're objecting to the  
 4 form of the question when I asked him why  
 5 did you sign the document? What is the  
 6 basis for the objection?  
 7 MS. DEITSCH-PEREZ: Because, John, I  
 8 think that it does call for a legal  
 9 conclusion other than – with him saying  
 10 because somebody told me to sign this  
 11 document. But if you want to go there,  
 12 that is fine.  
 13 MR. MORRIS: Okay.  
 14 MS. DANDENEAU: I don't think –  
 15 he's already said he's not a lawyer.  
 16 MR. MORRIS: I'll allow the witness  
 17 to answer this question.  
 18 Q. Why did you sign this document, sir?  
 19 A. I mean, our – our legal group would  
 20 bring by these incumbency certificates from  
 21 time to time. I have no idea why they're being  
 22 updated, and I was asked to sign.  
 23 Q. Did you ask anybody, what is this  
 24 document?  
 25 A. No.

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1 WATERHOUSE - 10-19-21  
 2 legal questions, to be clear. I'm asking  
 3 for this witness' understanding as to how  
 4 he became the acting treasurer of HCMFA.  
 5 If he doesn't know, he can say he doesn't  
 6 know, but this legal stuff is nonsense, and  
 7 I really object to it.  
 8 Q. Sir, I'm asking you a very simple  
 9 question.  
 10 MS. DANDENEAU: Argumentative.  
 11 Q. You testified – you testified that  
 12 you became the acting treasurer of HCM –  
 13 HCMFA; correct?  
 14 A. Yes.  
 15 Q. How did that happen?  
 16 MS. DANDENEAU: Again, object to  
 17 form.  
 18 MR. MORRIS: I can't wait to do this  
 19 in a courtroom. Good God.  
 20 Q. Go ahead, sir.  
 21 A. I don't know the exact process of  
 22 how that happened.  
 23 Q. Do you have any idea whether signing  
 24 this document was part of the process?  
 25 MR. MORRIS: You know what –

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1 WATERHOUSE - 10-19-21  
 2 Q. Did anybody tell you why they needed  
 3 you to sign the document?  
 4 A. Not that I can recall.  
 5 Q. You testified earlier that you  
 6 understood that you served as the acting  
 7 treasurer for HCMFA; correct?  
 8 A. Yes.  
 9 Q. How did you become the acting  
 10 treasurer of HCMFA?  
 11 MS. DANDENEAU: Objection to form.  
 12 A. I don't – I don't know the legal –  
 13 I don't know the legal mechanic of how I became  
 14 the acting treasurer.  
 15 Q. I'm not asking for the legal  
 16 mechanic. I'm asking you as the person who  
 17 is –  
 18 MS. DANDENEAU: John, you said –  
 19 MR. MORRIS: Stop.  
 20 MS. DANDENEAU: – how did you  
 21 become the treasurer. That is –  
 22 MR. MORRIS: Please stop.  
 23 MS. DANDENEAU: That is a legal  
 24 question.  
 25 MR. MORRIS: I am not asking any

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1 WATERHOUSE - 10-19-21  
 2 MS. DANDENEAU: Objection.  
 3 MR. MORRIS: – withdrawn. You guys  
 4 want to do this, I can't wait. I can't  
 5 wait. This is the craziest stuff ever.  
 6 MS. DANDENEAU: John, he said he's  
 7 not a lawyer, and you are asking him for a  
 8 legal conclusion, and he says he doesn't  
 9 know, and you persist.  
 10 MR. MORRIS: Okay.  
 11 MS. DANDENEAU: So you can ask these  
 12 questions –  
 13 MR. MORRIS: Did anyone – please  
 14 stop talking.  
 15 MS. DANDENEAU: – at another  
 16 point – no, no, no, I'm entitled to talk,  
 17 too; right? If you're going to make these  
 18 accusations as if we're trying to stonewall  
 19 you, this is not the witness to ask that  
 20 question.  
 21 MR. MORRIS: I can't – I can't  
 22 wait – I can't wait to do this in a  
 23 courtroom. I will just leave it at that.  
 24 MS. DANDENEAU: That's right, I'm  
 25 sure you can't.



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1 WATERHOUSE - 10-19-21  
 2 Q. Did anyone ever tell you, sir, that  
 3 even though you were the acting treasurer of  
 4 HCMFA, that you were not authorized to sign the  
 5 two promissory notes that we looked at before  
 6 lunch?  
 7 A. I'm not sure I understand the  
 8 question. I wasn't – I mean, I'm – I'm the  
 9 current acting treasurer.  
 10 Q. Did anybody ever tell you at any  
 11 time that even though you were the acting  
 12 treasurer of HCMFA, that you were not  
 13 authorized to sign the two promissory notes  
 14 that we looked at before lunch?  
 15 MS. DANDENEAU: Objection to form.  
 16 A. Not that I recall.  
 17 Q. Did anybody ever tell you at any  
 18 time that you were not authorized to sign the  
 19 two promissory notes that we looked at before  
 20 lunch?  
 21 A. Not that I recall.  
 22 Q. Did anybody ever tell you at any  
 23 time that you should not have signed the two  
 24 promissory notes that we looked at before  
 25 lunch?

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1 WATERHOUSE - 10-19-21  
 2 form.  
 3 MS. DANDENEAU: Objection, form.  
 4 A. Yes.  
 5 Q. As of October 20th – withdrawn.  
 6 I'm trying to take your mind back to  
 7 a year ago, October 2020. Do you recall at  
 8 that time that the boards of the retail funds  
 9 were making inquiries about obligations that  
 10 were owed by the advisors to Highland in  
 11 connection with their 15(c) review?  
 12 MS. DANDENEAU: Objection to form.  
 13 A. I don't – I don't recall.  
 14 Q. As of October 2020, you had no  
 15 reason to believe you weren't authorized to  
 16 sign the two promissory notes that we just  
 17 looked at; correct?  
 18 MS. DANDENEAU: Objection, form.  
 19 MS. DEITSCH-PEREZ: Objection to  
 20 form.  
 21 A. I didn't think about it in October  
 22 of 2020, but I mean –  
 23 Q. Did you have any reason to believe  
 24 at that time that you weren't authorized to  
 25 sign the two notes that we just looked at?

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1 WATERHOUSE - 10-19-21  
 2 A. Not that I recall.  
 3 Q. Did you ever tell anybody at any  
 4 time that you weren't authorized to sign the  
 5 two promissory notes that we looked at before  
 6 lunch?  
 7 A. Not that I recall.  
 8 Q. Did you ever tell anybody at any  
 9 time that you made a mistake when you signed  
 10 the two promissory notes that we looked at  
 11 before lunch?  
 12 A. Not that I recall.  
 13 Q. As you sit here right now, do you  
 14 have any reason to believe that you were not  
 15 authorized to sign the two documents that we  
 16 looked at before lunch?  
 17 MS. DANDENEAU: Objection to form.  
 18 A. If – if this is the – the valid  
 19 incumbency certificate, I mean, this does –  
 20 this does detail who the signers are.  
 21 Q. Okay. And looking at that document,  
 22 does that give you comfort that you were  
 23 authorized to sign the two promissory notes  
 24 that we looked at before lunch?  
 25 MS. DEITSCH-PEREZ: Object to the

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1 WATERHOUSE - 10-19-21  
 2 A. Not that I'm aware, no.  
 3 Q. Did you have any reason to believe a  
 4 year ago that you made a mistake when you  
 5 signed those two notes?  
 6 A. Not that I'm aware.  
 7 Q. A year ago you believed that HCMFA  
 8 owed Highland the unpaid principal amounts that  
 9 were due under those two notes; correct?  
 10 A. They're – they're promissory notes  
 11 that were – as you presented, that were –  
 12 that were executed. Whether they're valid or  
 13 if there's other reasons, I didn't – I don't  
 14 know.  
 15 Q. I'm not asking you whether they're  
 16 valid or not. I'm asking you for your state of  
 17 mind. A year ago you believed that HCMFA  
 18 was – was obligated to pay the unpaid  
 19 principal amount under the two notes that you  
 20 signed; correct?  
 21 A. Yeah, I'm – I'm – yes.  
 22 Q. Thank you. Are you aware – you're  
 23 aware that – that in 2017, NexPoint issued a  
 24 note in favor of Highland in the approximate  
 25 amount of \$30 million; correct?

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1 WATERHOUSE - 10-19-21  
 2 A. I'm – I'm – I'm generally aware.  
 3 Q. Okay. And are you generally aware  
 4 that from time to time, after the note was  
 5 issued by NexPoint, that moneys were applied to  
 6 principal and interest that were due under the  
 7 NexPoint note?  
 8 A. Yes, I'm generally aware.  
 9 Q. Okay. And did anybody ever tell you  
 10 that the payments that were made against the  
 11 NexPoint notes were made by mistake?  
 12 A. Yes.  
 13 Q. And is it the one payment that we  
 14 talked about earlier today?  
 15 A. We talked about a lot of things  
 16 today. What payment are we talking about?  
 17 Q. Okay. Who told you that any payment  
 18 made against the NexPoint note was made by  
 19 mistake?  
 20 A. D.C. Sauter.  
 21 Q. When did Mr. Sauter tell you that?  
 22 A. I don't – I don't remember  
 23 specifically.  
 24 Q. Do you remember what payments –  
 25 A. Sometime – sometime this year.

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1 WATERHOUSE - 10-19-21  
 2 I'm going to object here, and I'm going to  
 3 instruct the witness not to answer  
 4 depending on the discussion that you had –  
 5 Mr. Waterhouse, I'm the lawyer for  
 6 NexPoint, and as everyone here knows, D.C.  
 7 Sauter is in-house counsel.  
 8 So if you and Mr. Sauter were having  
 9 a factual discussion and him preparing his  
 10 affidavit, et cetera, then go ahead and  
 11 answer that. But if you were having a  
 12 discussion as to our legal strategy in this  
 13 lawsuit, or anything having to do with  
 14 that, then do not answer that.  
 15 And if you need to talk to either  
 16 your counsel or me about that, then we need  
 17 to have that discussion now.  
 18 A. Okay. Yeah, I don't – I don't  
 19 really know how to make that distinction, so  
 20 maybe I need to talk to counsel before I  
 21 answer, or if I can answer.  
 22 Q. Let me just ask you this question:  
 23 Did – did you have any conversation with  
 24 Mr. Sauter about any payment of principal and  
 25 interest prior to the time that you left

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1 WATERHOUSE - 10-19-21  
 2 Q. Sometime in 2021?  
 3 A. Yes.  
 4 Q. Do you remember what payment he was  
 5 referring to?  
 6 A. It was the – the payment made in  
 7 January of 2021 or – yeah, January of – of  
 8 this – January of 2021.  
 9 Q. Okay. So did anybody ever tell you  
 10 at any time that any payment that was made  
 11 against principal –  
 12 A. And – and – and – hold on, and it  
 13 may have been other – again, it may have been  
 14 that payment or – or there may have been what  
 15 he was explaining, a misapplication of prior  
 16 payments as well.  
 17 Q. Can you – can you give me any  
 18 specificity – withdrawn.  
 19 Withdrawn. Can you tell me  
 20 everything that Mr. Sauter told you about –  
 21 about errors in relation to payments made  
 22 against principal and interest due under the  
 23 NexPoint note?  
 24 MS. DANDENEAU: Can I just –  
 25 MR. RUKAVINA: Hold on. Hold on.

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1 WATERHOUSE - 10-19-21  
 2 Highland's employment, or did it happen after  
 3 you left Highland's employment?  
 4 A. I don't – I don't recall if – I  
 5 don't recall. I mean, it was sometime in 2021.  
 6 I don't remember if it was before or after I  
 7 was let go from Highland.  
 8 Q. Okay. So – so nobody told you  
 9 prior to 2021 that any error or mistake was  
 10 made in the application of payments against  
 11 principal and interest due on the NexPoint  
 12 note. Do I have that right?  
 13 A. Yeah, I don't – I don't recall this  
 14 being in 2020.  
 15 Q. Okay. And it didn't happen in 2019;  
 16 correct?  
 17 A. I don't recall that happened.  
 18 Q. And it didn't happen in 2018;  
 19 correct?  
 20 A. I don't – I don't recall that  
 21 happening.  
 22 Q. And it didn't happen in 2017;  
 23 correct?  
 24 A. I don't recall.  
 25 Q. But – but you believe the

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1 WATERHOUSE - 10-19-21  
 2 conversation took place in 2021. You just  
 3 don't remember if it was before or after you  
 4 left Highland's employment. Do I have that  
 5 right?  
 6 A. It was sometime this year. I  
 7 don't – I don't remember.  
 8 Q. Okay. Did you report this  
 9 conversation to Mr. Seery at any point?  
 10 A. I don't believe so.  
 11 Q. Did you report this conversation to  
 12 anybody at DSI at any time?  
 13 A. I don't recall.  
 14 Q. Do you have – you don't have a  
 15 recollection of ever doing that; correct?  
 16 A. Yeah, that's right. I don't recall  
 17 doing that.  
 18 Q. Do you recall telling anybody at  
 19 Pachulski Stang about the conversation you  
 20 recall with Mr. Sauter?  
 21 A. No, I don't – I don't recall.  
 22 Q. Did you tell any of the independent  
 23 board members about your conversation with  
 24 Mr. Sauter?  
 25 A. I don't recall.

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1 WATERHOUSE - 10-19-21  
 2 kind that NexPoint has ever made to try to  
 3 recover the amounts that it contends were – or  
 4 that Mr. Sauter contend were mistakenly applied  
 5 against principal and interest due under the  
 6 NexPoint note?  
 7 A. I'm not aware.  
 8 MS. DANDENEAU: Objection to form.  
 9 Q. Okay. The advisors' agreements with  
 10 the retail funds are subject to annual renewal;  
 11 correct?  
 12 A. Yes.  
 13 Q. And do you participate in the  
 14 renewal process each year?  
 15 A. Yes.  
 16 Q. What role do you play in the renewal  
 17 process?  
 18 A. I'm – I'm asked by the retail board  
 19 to walk-through the advisors financials.  
 20 Q. And do you do that in the context of  
 21 a board meeting?  
 22 A. Yes, it is – yes, it is typically  
 23 done in a board meeting.  
 24 Q. And do you recall the time –  
 25 does – does the renewal process happen around

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1 WATERHOUSE - 10-19-21  
 2 Q. Did you tell any of the employees at  
 3 Highland before you left Highland's employment  
 4 about this call that you had with Mr. Sauter?  
 5 MS. DANDENEAU: Objection to form.  
 6 A. No, I don't – no, I don't recall.  
 7 Q. NexPoint – to the best of your  
 8 knowledge, did NexPoint ever file a proof of  
 9 claim against Highland to try to recover moneys  
 10 that were mistakenly paid against the principal  
 11 and interest due under the note?  
 12 A. Okay. Hold on. You are saying did  
 13 NexPoint Advisors file a proof of claim to  
 14 Highland for errors related to payments under  
 15 the NexPoint note to Highland?  
 16 Q. Correct.  
 17 A. I'm – I'm – I'm not – I'm not  
 18 aware.  
 19 Q. Are you aware –  
 20 A. I'm not the legal person here, I  
 21 don't know.  
 22 Q. I'm just asking for your knowledge,  
 23 sir.  
 24 A. Yeah, I don't know. I'm not aware.  
 25 Q. Are you aware of any claim of any

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1 WATERHOUSE - 10-19-21  
 2 the same time each year?  
 3 A. Yes, it is – it is around the same  
 4 time every year.  
 5 Q. And what – what time period of the  
 6 year does the renewal process occur?  
 7 A. Approximately the September  
 8 timeframe.  
 9 Q. During that process, in your  
 10 experience, does the board typically conduct  
 11 its own diligence and ask for information?  
 12 A. Does the board ask for lots of – I  
 13 mean, just – I mean, lots of information as a  
 14 part of that – that – as part of that board  
 15 meeting and that process.  
 16 Q. Okay. And do you recall that the  
 17 process in 2020 spilled into October?  
 18 A. Yes. Yes.  
 19 Q. Okay. And as part of the process in  
 20 2020, the retail board asked – asked what are  
 21 referred to as 15(c) questions; right?  
 22 A. I guess I don't want to be – they  
 23 asked 15(c) – are you saying they asked 15(c)  
 24 questions and this is why it went into October  
 25 or –

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1 WATERHOUSE - 10-19-21  
 2 Q. No, I apologize.  
 3 Do you have an understanding of  
 4 what – of what 15(c) refers to in the context  
 5 of the annual renewal process?  
 6 A. Yes, generally.  
 7 Q. All right. What is your general  
 8 understanding of the term "15(c)" in the  
 9 context of the annual renewal process?  
 10 A. I – I think 15(c) is the section  
 11 that – that – you know, that – that the  
 12 board has to evaluate every year, the retail  
 13 board. They have to, you know, go through,  
 14 evaluate, and go through that approval process  
 15 on a yearly basis.  
 16 Q. Okay.  
 17 MR. MORRIS: Can we put up on the  
 18 screen Exhibit 36, please.  
 19 (Exhibit 36 marked.)  
 20 MR. MORRIS: I guess let's just  
 21 start at the bottom so Mr. Waterhouse can  
 22 see what is here.  
 23 Q. You see this begins with an email  
 24 from Blank Rome to a number of people.  
 25 MR. MORRIS: And if we can scroll

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1 WATERHOUSE - 10-19-21  
 2 Q. And then do you see that  
 3 Ms. Thedford includes you on the email string  
 4 on Tuesday, October 6th, at 5:52?  
 5 A. Yes.  
 6 Q. And she asks you and Dave Klos and  
 7 Kristin Hendrix for advice on that particular  
 8 Request No. 2 that I have just read; right?  
 9 A. Yes.  
 10 Q. Okay. Can you tell me who  
 11 Ms. Thedford is?  
 12 A. She was an attorney that was in the  
 13 legal group.  
 14 Q. At Highland Capital Management,  
 15 L.P.?  
 16 A. I'm – I'm – I'm – I don't  
 17 remember if she was an employee of Highland or  
 18 any of the advisors.  
 19 Q. Okay. Do you know if she served as  
 20 the corporate secretary for both HCMFA and  
 21 NexPoint?  
 22 A. Yes.  
 23 Q. And – okay.  
 24 Do you know whether Ms. Thedford  
 25 held any positions in relation to the retail

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1 WATERHOUSE - 10-19-21  
 2 up – keep going just a little bit.  
 3 Q. You will see that there is an email  
 4 from Lauren Thedford to Thomas Sargent and  
 5 others where she reports that she was attaching  
 6 and reproducing below additional 15(c)  
 7 follow-up questions from the board.  
 8 Do you see that?  
 9 A. Yes.  
 10 Q. And do you see Question No. 2 asks  
 11 whether there are any material outstanding  
 12 amounts currently payable or due in the future  
 13 (e.g., notes) to HCMLP by HCMFA or NexPoint  
 14 Advisors or any other affiliate that provides  
 15 services to the funds?  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. And – and did you – do you recall  
 19 that in – in October of 2020 the retail boards  
 20 were asking for that information?  
 21 A. I don't recall it, but there –  
 22 they're obviously asking in this email.  
 23 Q. Okay.  
 24 MR. MORRIS: Can we scroll up a  
 25 little bit, please.

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1 WATERHOUSE - 10-19-21  
 2 funds as we defined that term?  
 3 A. Yes.  
 4 Q. What is your understanding of the  
 5 positions that Ms. Thedford held at the retail  
 6 funds?  
 7 A. I – I recall her being an officer.  
 8 I don't recall her title.  
 9 Q. Okay. Is she still an officer at  
 10 any of the retail funds today?  
 11 A. No.  
 12 Q. Do you know when she ceased to be an  
 13 officer of the retail funds?  
 14 A. Approximately.  
 15 Q. And when did she approximately cease  
 16 to be an officer of the retail funds?  
 17 A. It was in – it was in early of  
 18 2021.  
 19 Q. Okay. Do you know when she became  
 20 an officer of the retail funds?  
 21 A. I don't recall.  
 22 Q. To the best of your recollection,  
 23 was she an officer of the retail funds in  
 24 October of 2020?  
 25 A. I believe so.

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Do you know what title she  
 3 held in her capacity as an officer, if any?  
 4 A. I told you I don't remember.  
 5 Q. Okay. So she sends this email to  
 6 you at 5:52 p.m. on October 6th.  
 7 And if we can scroll up to the  
 8 response, you responded a minute later with a  
 9 one-word answer. Yes.  
 10 Do you see that?  
 11 A. Yes.  
 12 Q. And – and yes is – yes was in  
 13 response to the retail board's Question No. 2,  
 14 right, whether there are any material  
 15 outstanding amounts currently payable or due in  
 16 the future?  
 17 A. Yes.  
 18 MR. MORRIS: And can we scroll up to  
 19 see what happened next.  
 20 Q. So Ms. Thedford writes back to you a  
 21 few minutes later and she asks whether you  
 22 could provide the amounts.  
 23 Do you see that?  
 24 A. Yes.  
 25 Q. And then you respond further and you

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. And then if we can scroll up,  
 3 you see Ms. Thedford responds to you  
 4 nine minutes later with a draft response.  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. And she says that she is taking from  
 8 the 6/30 financials certain information about  
 9 amounts that were due to HCMLP and affiliates  
 10 as of June 30th, 2020.  
 11 Do you see that?  
 12 A. I do.  
 13 Q. Okay. And did you believe, as the  
 14 treasurer of NexPoint and HCMFA and as the CFO  
 15 of Highland, that the information that  
 16 Ms. Thedford obtained from the 6/30 financials  
 17 was accurate and responsive in relation to the  
 18 retail fund board's question?  
 19 A. I just want to make sure I  
 20 understand the question.  
 21 Are you saying that the financial  
 22 information provided to the retail board as  
 23 part of the 15(c) process, which included  
 24 financial statements as of June 30th of 2021,  
 25 did I feel like those were responsive to their

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1 WATERHOUSE - 10-19-21  
 2 refer her to the balance sheet that was  
 3 provided to the board as part of the 15(c)  
 4 materials.  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. And – and did the advisors provide  
 8 to the board certain balance sheets in 2020 in  
 9 connection with the 15(c) review?  
 10 A. Yes, they did.  
 11 Q. Okay. And were the amounts that  
 12 were outstanding or that were to be due in the  
 13 future by the advisors to Highland included in  
 14 the liability section of the balance sheet that  
 15 was given to the retail board?  
 16 A. Yes. Notes would be reflected as  
 17 liabilities.  
 18 Q. Okay. And –  
 19 A. If I'm understanding your question  
 20 correctly.  
 21 Q. You are. And – and – and those  
 22 liabilities you – you were – you believed  
 23 were responsive to the retail board's question;  
 24 correct?  
 25 A. Yes.

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1 WATERHOUSE - 10-19-21  
 2 questions?  
 3 Q. Yes.  
 4 A. Yes.  
 5 Q. Thank you.  
 6 MS. DEITSCH-PEREZ: John, it is not  
 7 in the chat yet. Can you just make sure it  
 8 gets put in there.  
 9 MR. MORRIS: Sure.  
 10 MS. CANTY: I put it in there. I  
 11 think maybe I just sent it directly, so let  
 12 me make sure it says to everyone. But I  
 13 did put it in there. I will try again.  
 14 MR. MORRIS: Thank you, La Asia.  
 15 MS. DANDENEAU: What number is it.  
 16 MR. MORRIS: What, the Bates number?  
 17 MS. DEITSCH-PEREZ: No, the –  
 18 this – yeah, 36 is not in the chat.  
 19 MR. MORRIS: Okay. We'll get it.  
 20 MS. DANDENEAU: I think that  
 21 Ms. Canty just sent it to me originally.  
 22 Sorry.  
 23 MR. MORRIS: Okay. We will get it  
 24 there.  
 25 MS. CANTY: Okay. It is there now

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 2 for everyone.  
 3 MS. DEITSCH-PEREZ: Got it. Thank  
 4 you.  
 5 Q. Do you recall if the proposed  
 6 response that Ms. Thedford crafted was  
 7 delivered to the retail board with the – with  
 8 the yellow dates having been completed?  
 9 A. I don't know.  
 10 MR. MORRIS: Davor, I'm going to ask  
 11 that the advisors and – the advisors of  
 12 both HCMFA and NexPoint produce to me any  
 13 report that was given to the retail board  
 14 concerning the promissory notes at issue,  
 15 including the obligations under the notes.  
 16 Q. Do you know – do you know if  
 17 ultimately NexPoint informed the retail board  
 18 in response to its question that NexPoint owed  
 19 Highland approximately 23 or \$24 million?  
 20 MS. DANDENEAU: Objection to the  
 21 form.  
 22 A. Sorry, are you asking, did NexPoint  
 23 tell the retail board that it owed Highland?  
 24 Q. Let me ask a better question,  
 25 Mr. Waterhouse.

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1 WATERHOUSE - 10-19-21  
 2 obligations under the notes to Highland?  
 3 MS. DANDENEAU: Objection to form.  
 4 MS. DEITSCH-PEREZ: Object to the  
 5 form.  
 6 A. I don't recall specifically.  
 7 Q. Do you have any general recollection  
 8 of discussing with the retail board the  
 9 advisors' obligations to Highland under the  
 10 notes that they issued?  
 11 MS. DANDENEAU: Object to the form.  
 12 MS. DEITSCH-PEREZ: Object to the  
 13 form.  
 14 A. I just recall generally just – it  
 15 is just – I present the financial statements,  
 16 and if they have questions, I answer their  
 17 questions and walk them through.  
 18 I don't recall what they asked. I  
 19 don't recall where the discussion went. I  
 20 don't recall anything of that nature.  
 21 Q. Okay. Do you know if anybody on  
 22 behalf of HCMF – HCMFA ever told the retail  
 23 board that HCMFA had no obligations under the  
 24 two 2019 notes that you signed? Withdrawn.  
 25 Do you know whether anybody on

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1 WATERHOUSE - 10-19-21  
 2 Did – do you know if anybody ever  
 3 answered the retail board's question that was  
 4 Number 2?  
 5 A. I don't – I can't say for sure.  
 6 Q. Okay. Do you recall – I think you  
 7 testified earlier that you walked through the  
 8 advisors' financials with the retail board;  
 9 correct?  
 10 A. Yes.  
 11 Q. And as part of that process, did you  
 12 disclose to the retail board the obligations  
 13 that NexPoint and HCMFA had to Highland under  
 14 promissory notes?  
 15 A. The retail board, as I stated  
 16 earlier, receives financial information,  
 17 balance sheet, income statement information  
 18 from the advisors. That information is  
 19 provided to the retail board in connection with  
 20 the 15(c) process.  
 21 So any notes between the advisors  
 22 and the Highland would be – anything would be  
 23 detailed in those financial statements.  
 24 Q. Do you recall in 2020 ever speaking  
 25 with the retail board about the advisors'

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1 WATERHOUSE - 10-19-21  
 2 behalf of HCMFA ever told the retail boards  
 3 that you weren't authorized to sign either of  
 4 the two 2019 notes?  
 5 MS. DANDENEAU: Objection to form.  
 6 A. I'm not aware.  
 7 Q. Are you aware of anybody on behalf  
 8 of HCMFA ever telling the retail boards that  
 9 your execution of the two 2019 notes was a  
 10 mistake?  
 11 MS. DANDENEAU: Objection to form.  
 12 A. I'm not aware.  
 13 Q. Are you aware of anybody on behalf  
 14 of HCMFA ever telling the retail boards that  
 15 HCMFA did not have to pay the amounts reflected  
 16 in the two notes that you signed in 2019?  
 17 A. I'm not aware.  
 18 Q. Do you know whether anybody ever  
 19 told the retail boards – withdrawn.  
 20 Do you know whether anybody ever  
 21 told the retail boards that Highland has  
 22 commenced a lawsuit to recover on the two notes  
 23 that you signed in 2019?  
 24 A. I'm not aware.  
 25 Q. Are you aware of anybody informing

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1 WATERHOUSE - 10-19-21  
 2 the retail boards that Highland has sued to  
 3 recover on the NexPoint note?  
 4 A. I'm not aware.  
 5 Q. Do you know whether anybody ever  
 6 told the retail board that Highland had  
 7 declared a default with respect to the two  
 8 HCMFA notes that you signed in 2019?  
 9 A. I'm not aware.  
 10 Q. Are you aware of anybody ever  
 11 informing the retail boards that Highland had  
 12 declared a default under the NexPoint note?  
 13 A. I'm not aware.  
 14 Q. Are you aware of anybody telling the  
 15 retail board that Highland made a demand for  
 16 payment under the 2019 notes that you signed on  
 17 behalf of HCMFA?  
 18 A. I'm not aware.  
 19 Q. Let's -- let's see if there is a  
 20 response to Ms. Thedford's email, if we can  
 21 scroll up.  
 22 Do you see you responded to  
 23 Ms. Thedford five minutes after she provided  
 24 the draft response to you?  
 25 A. Yes.

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1 WATERHOUSE - 10-19-21  
 2 Q. Does Mr. Norris play a role in  
 3 formulating the advisors' responses to the  
 4 questions asked by the retail board in  
 5 connection with the 15(c) annual review?  
 6 MS. DANDENEAU: Objection to form.  
 7 A. He -- Dustin Norris is there in the  
 8 board meetings. But -- so he has a role, yes.  
 9 Q. Okay. And does Mr. Norris hold any  
 10 positions, to the best of your knowledge, in  
 11 relation to any of the retail funds?  
 12 A. I don't -- I don't believe he does.  
 13 Q. How about Mr. Post, do you know  
 14 whether Mr. Post holds any position in either  
 15 of the advisors?  
 16 A. I mean, he -- he -- yes.  
 17 Q. What is your understanding of the  
 18 positions that Mr. Post holds in relation to  
 19 the advisors?  
 20 MS. DANDENEAU: Objection to form.  
 21 A. He is an employee of NexPoint  
 22 Advisors. He is also the chief compliance  
 23 officer for -- for NexPoint.  
 24 Q. Who is the chief compliance officer  
 25 for HCMFA, if you know?

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. And do you see that Dustin  
 3 Norris is copied on this email?  
 4 A. Yes, he is.  
 5 Q. Great. Do you know whether  
 6 Mr. Norris held any positions at either of the  
 7 advisors as of October 6, 2020?  
 8 A. I will go back to -- I'm not the  
 9 legal expert of what appoints you or how or  
 10 why, but you did see Dustin's name on the  
 11 incumbency certificate that you produced  
 12 earlier.  
 13 Q. Do you know what his title was in  
 14 October of 2020?  
 15 MS. DANDENEAU: Objection to form.  
 16 A. I don't -- I don't recall.  
 17 Q. Was he -- did he have a title with  
 18 each of the advisors, to the best of your  
 19 recollection?  
 20 A. I don't recall.  
 21 Q. Do you know why he is included on  
 22 this email string?  
 23 A. I didn't add Dustin. It looks like  
 24 Lauren did. I don't know why she added him or  
 25 not. You would have to ask her.

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1 WATERHOUSE - 10-19-21  
 2 MS. DANDENEAU: Objection to form.  
 3 A. That would be Jason as well.  
 4 Q. Okay. Now, looking at your  
 5 response, you noted initially that nothing was  
 6 owed under shared services. Do I have that  
 7 right in substance?  
 8 A. Yeah. I think I'm being responsive  
 9 to Lauren's question here, whether any of the  
 10 shared service invoices are outstanding.  
 11 Q. Right.  
 12 A. Yes.  
 13 Q. And that is because -- and that is  
 14 because the retail the retail board has asked  
 15 for the disclosure of all material obligations  
 16 that were owed to HCMLP either then or in the  
 17 future; isn't that right?  
 18 MS. DANDENEAU: Objection to form.  
 19 Q. We can go back down and look.  
 20 A. Look, I don't know if that's a  
 21 material item, I mean, again, but sure.  
 22 Q. Okay. But there were no shared  
 23 services outstanding; correct?  
 24 MS. DANDENEAU: Objection to form.  
 25 A. That is what this email seems to

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 2 indicate.  
 3 Q. And you wouldn't have written it if  
 4 you didn't believe it to be true at the time;  
 5 correct?  
 6 A. Correct.  
 7 Q. And when you referred to shared  
 8 services outstanding, what you meant there was  
 9 that neither NexPoint nor HCMFA owed Highland  
 10 any money under the shared services agreements  
 11 that they had with Highland as of October 6th,  
 12 2020; right?  
 13 A. I don't know if it is as of October  
 14 6, 2020 or if it was from – like through the  
 15 financials – through the date of the  
 16 financials as of June 30.  
 17 Q. Okay. And then you noted that  
 18 HCMA – the HCMFA note is a demand note; right?  
 19 A. Yes.  
 20 Q. And then you referred Ms. Thedford  
 21 to Kristin Hendrix for the term of the NexPoint  
 22 note. Do I have that right?  
 23 A. Yes.  
 24 Q. And then you refer to that agreement  
 25 that is referenced in the 2018 audited

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 2 actually, it may not even have been me. I say  
 3 the attorneys in, you know, a lot of – like I  
 4 talked about the team.  
 5 It could have been someone on the  
 6 team, like, hey, we need to run this down, and  
 7 maybe they talked to attorneys again and  
 8 relayed that information to me.  
 9 So I really don't know if I spoke or  
 10 someone else did or – or, I mean, and maybe it  
 11 wasn't even from corporate accounting. Maybe  
 12 it was, you know, other – I'm kind of  
 13 summarizing, you know, again, so I don't really  
 14 know – I can't really say for sure. I don't  
 15 remember how I came about of this knowledge.  
 16 Q. I appreciate your efforts,  
 17 Mr. Waterhouse, but I will just tell you that  
 18 if I ask a question and you don't know the  
 19 answer or you don't recall, I'm happy to accept  
 20 that. I don't – I don't want you to  
 21 speculate, so I want to be clear about that.  
 22 So I appreciate it.  
 23 Let me just ask you simply: Do you  
 24 know what attorneys – can you identify any of  
 25 the attorneys who thought that the bankruptcy

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 2 financials about Highland's agreement not to  
 3 make demand upon HCMFA until May 2021; correct?  
 4 A. Correct.  
 5 Q. And then – and then the next thing  
 6 you write is that the attorneys think that BK  
 7 doesn't change that, but don't know for sure at  
 8 the end of the day.  
 9 Do you see that sentence?  
 10 A. Yes.  
 11 Q. Which attorneys were you referring  
 12 to?  
 13 A. I don't remember.  
 14 Q. Did you have a conversation with  
 15 attorneys concerning whether the bankruptcy  
 16 would change or alter in any way the agreement  
 17 not to make a demand under the HCMFA note?  
 18 A. Look, yeah, I mean, I don't  
 19 specifically remember, but generally, I mean,  
 20 it is in this email. I don't – I don't – I  
 21 don't – I don't remember who I talked to or,  
 22 you know, was it inside counsel, outside  
 23 counsel, but obviously I talked to somebody.  
 24 Q. Do you have any recollection –  
 25 A. Well, I don't even know if it's –

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 2 process didn't change the agreement?  
 3 A. I don't recall.  
 4 Q. Okay. Perfect.  
 5 And then let's look at the last  
 6 sentence. It says, quote: The response should  
 7 include, as I covered in the board meeting,  
 8 that both entities have the full faith and  
 9 backing from Jim Dondero, and to my knowledge  
 10 that hasn't changed.  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. Okay. Prior to October 6th, 2020,  
 14 had you told the retail board that HCMFA and  
 15 NexPoint have the full faith and backing from  
 16 Jim Dondero?  
 17 A. Yes.  
 18 Q. Do you remember in the context in  
 19 which you told the retail board that?  
 20 A. I mean, generally, yes.  
 21 Q. Tell me what you recall.  
 22 A. So we were walking through the  
 23 financials from the advisors; right? So as I  
 24 described to you, you have got HCMFA and NPA.  
 25 And these – the financials, you know, show



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 2 they have liabilities on them that exceed  
 3 assets.  
 4 So the retail board has asked, okay,  
 5 you know, how – you know, if – if these  
 6 liabilities come due or they're payable, you  
 7 know, how does that come about?  
 8 And, you know, the response is,  
 9 well, the advisors have the – the full faith  
 10 and backing from – from Jim Dondero.  
 11 Q. And how did you know that the  
 12 advisors had the full faith and backing from  
 13 Jim Dondero? What was the basis for that  
 14 statement that you made to the retail board?  
 15 A. I talked to Jim about it at some  
 16 point in the past.  
 17 Q. And did you tell Mr. Dondero that  
 18 you were going to inform the retail board that  
 19 the advisors had his full faith and backing  
 20 before you actually told that to the retail  
 21 board?  
 22 A. I don't recall having that  
 23 conversation.  
 24 Q. Do you recall if you ever informed  
 25 Mr. Dondero that you had disclosed or told the

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 2 the call?  
 3 A. Other than the board members?  
 4 Q. Yes.  
 5 A. Lauren Thedford. I mean, there  
 6 are – there are many – my section is just one  
 7 of many sections that are just – you know, as  
 8 you can appreciate, this is a long board  
 9 meeting.  
 10 I can't recall specifically, really  
 11 even generally, or who was on when this was  
 12 discussed. But Lauren was typically on for the  
 13 entire time.  
 14 Q. I apologize if I asked you this, but  
 15 do either of Mr. Norris or Mr. Post hold any  
 16 positions relative to the retail funds?  
 17 A. I think you asked me this already,  
 18 John.  
 19 Q. Okay. I just don't recall. Can you  
 20 just refresh my recollection if I did, in fact,  
 21 ask you the question?  
 22 A. I don't believe – if we can go  
 23 back. I don't believe Mr. Norris has a title  
 24 at the retail funds. Mr. – and Mr. Post is  
 25 the CCO of the advisor, the advisors.

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 2 retail board that the advisors had the full  
 3 faith and backing of Mr. – Mr. Dondero?  
 4 MS. DEITSCH-PEREZ: Object to the  
 5 form.  
 6 A. I don't recall discussing that with  
 7 him at the time.  
 8 Q. When you told this to the board, was  
 9 Mr. Dondero participating in the discussion?  
 10 A. Not that I recall.  
 11 Q. Withdrawn. Was it not – withdrawn.  
 12 Do you recall whether – when you  
 13 covered this issue with the board, was that in  
 14 a – a Zoom call or a Webex call? Was it a  
 15 telephone call? Was it in-person? Like where  
 16 were you physically in relation to the board?  
 17 A. I believe I was at home.  
 18 Q. Okay. Can you identify every person  
 19 that you recall who was present for this  
 20 disclosure other than – other than the board  
 21 members themselves?  
 22 MS. DEITSCH-PEREZ: Object to the  
 23 form.  
 24 A. I don't recall everyone on the call.  
 25 Q. Can you identify anybody who was on

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Do you know if either of them  
 3 have a position with the retail board – with  
 4 the retail funds?  
 5 A. I don't believe Mr. Norris has a  
 6 position with the retail funds.  
 7 Q. All right. What about Mr. Post?  
 8 A. Mr. Post is the CCO of the advisors.  
 9 Q. Okay. Does he hold any position –  
 10 A. I don't believe so.  
 11 Q. – with the retail funds?  
 12 A. I don't believe so.  
 13 Q. Okay.  
 14 A. I don't know if being the CCO for  
 15 the advisor conveys something for the retail  
 16 funds. Again, I am not – that is the legal  
 17 compliance part of it. I don't know.  
 18 Q. Why did you tell the retail board  
 19 that the advisors have the full faith and  
 20 backing from Mr. Dondero?  
 21 MS. DANDENEAU: Objection to form.  
 22 A. It is – it is – it is what has  
 23 been discussed with them prior.  
 24 Q. And were you – were you trying to  
 25 give them comfort that even though the

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 2 liabilities exceeded the assets that the  
 3 advisors would still be able to meet their  
 4 obligations as they become due?  
 5 MS. DANDENEAU: Objection to form.  
 6 MS. DEITSCH-PEREZ: Object form.  
 7 A. I – I can't – I don't remember  
 8 specifically the conversation, but generally –  
 9 you know, generally, yes. And that is why –  
 10 but, you know, again, in this email saying, you  
 11 know, I am sure I qualified it with the retail  
 12 board, you know, as I said I like – you know,  
 13 to my knowledge, that hasn't changed. But,  
 14 again, generally – generally that is what I  
 15 remember.  
 16 Q. Okay. Do you recall if in the  
 17 advisors' response to the retail board's  
 18 question if the response included any statement  
 19 concerning Mr. Dondero and – and the full  
 20 faith and backing that he was giving to the  
 21 advisors?  
 22 MS. DEITSCH-PEREZ: Object to the  
 23 form.  
 24 A. I don't – I don't remember  
 25 specifically what was provided.

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 2 Q. Okay. And did the liabilities of  
 3 NexPoint exceed its assets in 2020?  
 4 MS. DEITSCH-PEREZ: Objection to  
 5 form.  
 6 A. I don't believe so.  
 7 Q. Okay. So – so it was only one of  
 8 the two advisors who had liabilities that  
 9 exceeded the value of the assets.  
 10 Do I have that right?  
 11 MS. DEITSCH-PEREZ: Objection to  
 12 form.  
 13 MS. DANDENEAU: Form.  
 14 A. Yes.  
 15 Q. And do you know, ballpark, the  
 16 amount by which the value of HCMFA's  
 17 liabilities exceeded their assets in 2020?  
 18 MS. DANDENEAU: Objection to form.  
 19 A. I don't – I don't recall.  
 20 MR. MORRIS: I had specifically  
 21 requested in discovery the audited  
 22 financial reports for both advisors and  
 23 NexPoint. I think I may have gotten one  
 24 for NexPoint but I'm still waiting for the  
 25 balance. And I'm going to renew my request

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 2 Q. Okay.  
 3 A. And I don't really – I don't really  
 4 remember generally either.  
 5 Q. Okay.  
 6 MR. MORRIS: So – so, again, I'm  
 7 just going to ask Mr. Rukavina if your  
 8 clients can produce as soon as possible the  
 9 15(c) response, the written response that  
 10 the advisors made, if any, to the board's  
 11 Question No. 2.  
 12 I'm not looking for the whole  
 13 response, but I certainly want the response  
 14 to Question No. 2.  
 15 Q. Do you have a general understanding  
 16 as to the amount by which – withdrawn.  
 17 Did – did the assets of –  
 18 withdrawn.  
 19 Did the liabilities of HCMFA exceed  
 20 its assets in 2020?  
 21 MS. DANDENEAU: Objection to form.  
 22 MS. DEITSCH-PEREZ: Objection, form.  
 23 A. I believe I have already answered  
 24 that question earlier, I think. I believe I  
 25 said yes.

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 2 for those documents too.  
 3 Q. Let's go to the next exhibit, which  
 4 is Number 10. So I think it is in your stack,  
 5 Mr. Waterhouse.  
 6 MR. MORRIS: And we can take the one  
 7 down from the screen and put up Number 10  
 8 for everybody.  
 9 (Exhibit 10 marked.)  
 10 Q. And I don't know if you have ever  
 11 seen this before, but I'm really putting it up  
 12 on the screen for purposes of turning to the  
 13 very last page of the document.  
 14 So this is a document that we have  
 15 been – that we premarked as Exhibit 10. And  
 16 we're turning to the last page of the document,  
 17 which is a document that was filed in the  
 18 adversary proceeding 21-3004. And – no, I  
 19 apologize, I think we – right there. Perfect.  
 20 And it is page 31 of 31.  
 21 MR. MORRIS: I think there may have  
 22 been some something erroneously stapled to  
 23 the hard copy that I gave you folks, but  
 24 I'm looking for page 31 of 31 in the  
 25 document that begins with the first page of

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 2 Exhibit 10.  
 3 Q. Do you have that, Mr. Waterhouse?  
 4 A. I don't have it yet. I'm looking.  
 5 Q. All right. If you look at the top  
 6 right-hand corner, you will see it says page  
 7 hopefully something of 31?  
 8 A. Yes, I've got it now.  
 9 Q. Okay. You have got 31 of 31. You  
 10 can take a moment to read that, if you would  
 11 like.  
 12 A. (Reviewing document.) Okay.  
 13 Q. Have you ever seen this before?  
 14 A. I don't know if I have seen this  
 15 specific document, but, you know, I've --  
 16 I'm -- I'm aware of it.  
 17 Q. And is this the document that you  
 18 had in mind when you sent that email to  
 19 Ms. Thedford that we just looked at where you  
 20 said that Highland had agreed not to make a  
 21 demand upon HCMFA until May 2021?  
 22 A. Honestly, I don't -- it wasn't this  
 23 document. I mean, it's something like this,  
 24 yes. I mean, yes.  
 25 Q. Well --

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 2 A. I don't know.  
 3 Q. All right. This document is dated  
 4 April 15, 2019. Do you see that?  
 5 A. I do.  
 6 Q. And do you remember that the audit  
 7 was completed on June 3rd, 2019?  
 8 A. Yes.  
 9 Q. And do you recall that the audited  
 10 financials -- and I'm happy to pull them up if  
 11 you would like, but do you recall that the  
 12 audited financials included a reference to the  
 13 agreement pursuant to which Highland agreed not  
 14 to make a demand until May 31st, 2021?  
 15 A. Yes, I remember.  
 16 Q. And as part of the process, would  
 17 you have expected the corporate accounting team  
 18 to have provided a copy of this document to  
 19 PwC?  
 20 MS. DANDENEAU: Objection to form.  
 21 A. Yes, I would have expected something  
 22 like this, or again, you know, some document  
 23 that basically states -- states the deferral  
 24 till May 31 of 2020.  
 25 Q. Okay.

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 2 A. It is something like this, but I  
 3 don't think it was this specific document.  
 4 Q. Well, but this document does say in  
 5 the last sentence that Highland agreed not to  
 6 seek -- not to demand payment from HCMFA prior  
 7 to May 31, 2021; right?  
 8 A. Yes.  
 9 Q. And are you aware of any other  
 10 document that was ever created pursuant to  
 11 which Highland agreed not to demand payment on  
 12 amounts owed by HCMFA before May 31, 2021?  
 13 A. Hold on. Are you asking, am I aware  
 14 of a document that by HCMFA that basically says  
 15 otherwise?  
 16 Q. No. Let me try again.  
 17 Are you aware of any other document  
 18 pursuant to which -- pursuant to which Highland  
 19 agreed not to make a demand on HCMFA until May  
 20 31st, 2021?  
 21 A. I'm -- I think there was something  
 22 in connection with -- with the -- with the  
 23 audit that basically says the same thing.  
 24 Q. Okay. And do you think that the  
 25 audit is referring to this particular document?

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 2 A. May 31 of 2021, excuse me.  
 3 Q. And this document states the  
 4 deferral that you just described; correct?  
 5 A. It does.  
 6 Q. And this document states the  
 7 deferral that was described in the audited  
 8 financial statements that we looked at before;  
 9 correct?  
 10 A. It does.  
 11 MR. MORRIS: Okay. Can we scroll  
 12 down just a little bit to see who signed on  
 13 behalf of the acknowledgment there.  
 14 Q. Okay. So Mr. Dondero signed this  
 15 document on behalf of both HCMFA and Highland;  
 16 do you see that?  
 17 A. I do.  
 18 Q. Okay. Did you discuss this document  
 19 or the -- withdrawn.  
 20 Did you discuss the concept of the  
 21 deferral with Mr. Dondero in the spring of  
 22 2019?  
 23 A. I think I testified I don't recall.  
 24 Q. Okay. Do you know whose idea it was  
 25 to issue the acknowledgment in this form?

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 2 A. I don't recall.  
 3 MR. MORRIS: Can we scroll back up  
 4 to the document, please.  
 5 Q. Do you see in the beginning it says,  
 6 reference is made to certain outstanding  
 7 amounts loaned from Highland to HCMFA for  
 8 funding ongoing operations.  
 9 Do you see that?  
 10 A. Yes.  
 11 Q. And were you aware as the CFO of  
 12 Highland and as the treasurer of HCMFA that as  
 13 of April 15, 2019, Highland had made certain  
 14 loans to HCMFA to fund HCMFA's ongoing  
 15 operations?  
 16 A. Yes.  
 17 Q. And were you aware that those loans  
 18 were payable on demand and remained outstanding  
 19 as of December 31st, 2018?  
 20 A. Yes.  
 21 Q. And were you aware that those  
 22 amounts were payable on demand, and they  
 23 remained outstanding as of April 15, 2019?  
 24 MS. DEITSCH-PEREZ: Object to the  
 25 form.

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 2 As the treasurer of HCMFA, did you  
 3 believe that – do you believe that statement  
 4 was true and accurate at the time it was  
 5 rendered?  
 6 A. I mean, it – it – the answer to  
 7 that is I really didn't have any – I didn't  
 8 have an opinion really.  
 9 Q. Did you do anything to educate  
 10 yourself in April of 2019 on the issue of  
 11 whether HCMFA could repay the amounts that it  
 12 owed to Highland should they become due?  
 13 A. I don't believe so.  
 14 Q. Did you at any time form any  
 15 opinions as to HCMFA's ability to repay all  
 16 amounts due to Highland should they become due?  
 17 A. Not really. I guess I don't...  
 18 Q. Well, you told the retail board that  
 19 HCMFA's liabilities exceeded their assets in  
 20 2020; correct?  
 21 A. Yes.  
 22 Q. Based on the work that you did to  
 23 prepare for the retail board, did you form any  
 24 view as to whether HCMFA would be unable to  
 25 repay the amounts that it owed to Highland

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 2 A. Well, this – this document dated  
 3 April 15, 2019 says they have been deferred to  
 4 May 31, 2021.  
 5 Q. Right. But I'm just sticking to the  
 6 first paragraph where they refer to the  
 7 outstanding amounts. And in the end it says  
 8 the – it remained outstanding on December  
 9 31st, 2018, and I think you told me that you  
 10 understood that, and then I'm just trying to  
 11 capture the last piece of it.  
 12 Did you understand that there were  
 13 amounts outstanding from the loan that Highland  
 14 made to HCMFA to fund ongoing operations as of  
 15 April 15th, 2019?  
 16 A. Yes.  
 17 Q. Thank you. Let's look at the next  
 18 sentence. HCMFA expects that it may be unable  
 19 to repay such amounts should they become due  
 20 for the period commencing today and continuing  
 21 through May 31st, 2021.  
 22 Do you see that?  
 23 MS. DANDENEAU: Objection to form.  
 24 A. I do.  
 25 Q. As the CFO – withdrawn.

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1 WATERHOUSE - 10-19-21  
 2 should they become due?  
 3 MS. DANDENEAU: Objection to form.  
 4 A. I mean, I – when you look at that,  
 5 to answer you, completely, you know, again,  
 6 if – the response I gave the retail board was,  
 7 you know, the – the advice – HCMFA advisors  
 8 have the – have the full faith and backing of  
 9 Jim Dondero. So I didn't form an opinion of  
 10 whether the advisor could pay it or not.  
 11 Q. Did you form any view as to whether  
 12 the advisors could repay the amounts that it  
 13 owed to Highland should they become due without  
 14 the full faith and backing of Mr. Dondero?  
 15 MS. DANDENEAU: Objection to form.  
 16 MS. DEITSCH-PEREZ: Form.  
 17 A. I mean, if you – if you – if you  
 18 take that last statement out, I mean, it would  
 19 be difficult for HCMFA to pay back demand notes  
 20 at that time.  
 21 Q. And it was precisely for that reason  
 22 that you told the retail board that – that the  
 23 retail – that the advisors had the full faith  
 24 and backing of Mr. Dondero; correct?  
 25 MS. DANDENEAU: Objection to form.

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 2 A. I mean, yes, as the mouthpiece, I  
 3 was relaying information.  
 4 Q. Okay. And you relayed that  
 5 information with the knowledge and approval of  
 6 Mr. Dondero; correct?  
 7 MS. DEITSCH-PEREZ: Object to the  
 8 form.  
 9 A. As I stated in the email, I don't  
 10 believe, and I think I testified I don't  
 11 believe I had conversations with Mr. Dondero at  
 12 the time of that board meeting.  
 13 Q. Did you tell the retail board that  
 14 the advisors had the full faith and backing of  
 15 Mr. Dondero without Mr. Dondero's prior  
 16 approval?  
 17 A. Yeah, I – I – yes, I'm – like I  
 18 said, I think I testified earlier, I'm sure I  
 19 qualified it as well.  
 20 Q. What do you mean by that?  
 21 MS. DANDENEAU: Objection to form.  
 22 A. Again – again, like I said in the  
 23 email, it has the full faith and backing of Jim  
 24 Dondero unless that has changed.  
 25 Q. Actually that is not what you said,

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 2 something has changed – to my knowledge, it  
 3 hasn't changed, but it could have changed.  
 4 Q. When you say that the advisors have  
 5 the full faith and backing from Mr. Dondero,  
 6 did you intend to convey that, to the extent  
 7 the advisors were unable to satisfy their  
 8 obligations as they become due, Mr. Dondero  
 9 would do it for them?  
 10 MS. DANDENEAU: Object to the form.  
 11 MS. DEITSCH-PEREZ: Object to the  
 12 form.  
 13 And, John, we have given you a lot  
 14 of leeway here but this does not seem  
 15 relevant to this case. You seem sort of  
 16 taking a complete sort of diversion into  
 17 the allegations and the complaint just  
 18 filed on Friday, and so I would ask you to  
 19 move on because –  
 20 MR. MORRIS: And I will tell you –  
 21 I will tell you that I have never read that  
 22 complaint cover-to-cover. I have nothing  
 23 to do with the prosecution of those claims.  
 24 And this issue that we're talking about  
 25 right now is related solely to the

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 2 so let's put the email back up.  
 3 A. It is – it is – it is in the  
 4 email.  
 5 Q. Let's put the email back up. You  
 6 didn't say unless it has changed. You said you  
 7 believe it hasn't changed; right?  
 8 A. Okay. And to my knowledge that  
 9 hasn't changed, that is what it says.  
 10 Q. That's right.  
 11 A. But, again, I mean, that is – I  
 12 don't know everything. And I'm not in every  
 13 conversation. I'm not – to presume that I am,  
 14 is – and you have to put myself – as you  
 15 started this out, Mr. Morris, I was at home in  
 16 October of 2020 with COVID – or, you know,  
 17 under these COVID times that we described is  
 18 very difficult.  
 19 We have all been working at home for  
 20 really the first time ever, undergoing  
 21 processes, procedures, control environments  
 22 that have been untested, and there is poor  
 23 communication.  
 24 So I am relaying, as I'm telling you  
 25 now, what is in the email. And unless

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 2 promissory notes that your clients refuse  
 3 to pay.  
 4 So I'm going to continue to ask my  
 5 questions, and I would ask the court  
 6 reporter to read back my last question.  
 7 (Record read.)  
 8 MS. DEITSCH-PEREZ: And then I  
 9 believe there were objections to form.  
 10 Q. You can answer the question.  
 11 A. Yes.  
 12 Q. Thank you very much, sir.  
 13 MR. MORRIS: Can we go back to the  
 14 other document, please?  
 15 Q. Mr. Waterhouse, do you know if this  
 16 document was ever shared with the retail board?  
 17 A. I don't recall.  
 18 Q. Did you ever share it with the  
 19 retail board?  
 20 A. I don't recall.  
 21 Q. Did you ever tell the retail board  
 22 about the substance of this document?  
 23 A. I don't recall.  
 24 Q. Did you ever tell the retail board  
 25 that Highland had agreed not to make a demand

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 2 against HCMFA until May 2021?  
 3 A. I don't recall.  
 4 Q. Do you know whether anybody on  
 5 behalf of the advisors ever informed the retail  
 6 board that Highland had agreed on April 15,  
 7 2019, not to make a demand against HCMFA under  
 8 the promissory notes?  
 9 A. I don't recall.  
 10 Q. Did you instruct Ms. Thedford or  
 11 anybody else responding to the retail board's  
 12 15(c) inquiry to disclose this document?  
 13 A. Did I instruct Ms. Thedford or  
 14 anyone else to -- to -- to produce this, to  
 15 disclose this document? Is that what you -- I  
 16 just want to make sure.  
 17 Q. Uh-huh.  
 18 A. Yeah, I don't -- I don't recall.  
 19 Q. Did you instruct anybody to inform  
 20 the retail board, in response to their question  
 21 as part of the 15(c) process, to -- to tell the  
 22 retail board about Highland's agreement not to  
 23 make a demand until 2021?  
 24 MS. DANDENEAU: Objection to form.  
 25 A. I don't recall.

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1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. Do you recall looking in the  
 4 document and seeing anything that was disclosed  
 5 with respect to the sentence above that?  
 6 A. No.  
 7 Q. Do you know whether anybody on  
 8 behalf of Highland ever informed  
 9 PricewaterhouseCoopers that HCMFA expects that  
 10 it may be unable to repay amounts due and owing  
 11 to Highland should they become due?  
 12 MS. DEITSCH-PEREZ: Object to the  
 13 form. I think that is the third time.  
 14 A. I don't recall. Again, as I said,  
 15 we -- all of this was given to the auditors.  
 16 Q. Do you know if Highland received  
 17 anything of value in exchange for its agreement  
 18 not to demand payment on amounts owed by HCMFA  
 19 prior to May 31st, 2021?  
 20 MS. DEITSCH-PEREZ: Object to the  
 21 form. That is the second time.  
 22 MS. DANDENEAU: Object to the form.  
 23 A. I have answered this question.  
 24 MR. RUKAVINA: Hold on. Object to  
 25 legal conclusion. Go ahead.

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1 WATERHOUSE - 10-19-21  
 2 Q. Did you ever inform PwC that HCMFA's  
 3 liabilities exceeded its assets?  
 4 MS. DANDENEAU: Object to the form.  
 5 A. I don't -- I don't think I told  
 6 them. I mean, they -- they audited the  
 7 financial statements.  
 8 Q. Did -- do you know if anybody on  
 9 behalf of Highland ever informed  
 10 PricewaterhouseCoopers that HCMFA may be unable  
 11 to repay amounts owing to Highland, should they  
 12 become due?  
 13 MS. DANDENEAU: Objection to form.  
 14 A. Yes. Again, I think I testified  
 15 earlier that -- that this was communicated to  
 16 the auditors.  
 17 Q. Ideally --  
 18 A. I don't know who exactly did that.  
 19 I don't recall doing it, but, yeah, it was --  
 20 it was communicated. And that is why -- I  
 21 mean, there is a disclosure in the financial  
 22 statements; right?  
 23 Q. There is, and that disclosure  
 24 relates to the last sentence of this document;  
 25 correct?

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1 WATERHOUSE - 10-19-21  
 2 A. I have answered this question  
 3 before.  
 4 Q. And the answer was no?  
 5 A. I'm not aware.  
 6 Q. Now, this acknowledgment can't  
 7 possibly apply to the two notes that you signed  
 8 on behalf of HCMFA because those notes were  
 9 signed on May 2nd and May 3rd, 2019; is that  
 10 right?  
 11 MS. DANDENEAU: Objection to form.  
 12 A. Unless there is a drafting error.  
 13 Q. Okay. Are you aware of a drafting  
 14 error?  
 15 A. I'm not aware. I didn't -- I wasn't  
 16 part of -- I didn't sign this note or this  
 17 acknowledgment. I didn't draft it.  
 18 Q. But you do see it is dated April 15,  
 19 2019; right?  
 20 A. Yes.  
 21 Q. And this was a document that was  
 22 actually included by the advisors in a pleading  
 23 they filed with the Court; right?  
 24 MR. RUKAVINA: Well, I don't know  
 25 that so I object to form.

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Let's go to the first page of  
 3 the document and just confirm that.  
 4 MR. AIGEN: Mr. Morris, I just note  
 5 that you already said there was some error  
 6 with the document that is listed as  
 7 exhibit –  
 8 MR. MORRIS: No. No, no, no.  
 9 MS. DEITSCH-PEREZ: Oh, okay.  
 10 MR. MORRIS: What I said is that  
 11 there is a few pages that were mistakenly  
 12 stapled to the end of the document.  
 13 MS. DEITSCH-PEREZ: Okay.  
 14 MR. MORRIS: There is no problem  
 15 with this document.  
 16 MS. DEITSCH-PEREZ: And just so  
 17 we're clear that the document – the pages  
 18 that start with defendant's amended answer  
 19 are not intended to be part of this  
 20 document?  
 21 MR. MORRIS: That's correct.  
 22 MS. DEITSCH-PEREZ: And that the –  
 23 but it is your representation that the rest  
 24 of the document is – is – is correct  
 25 because we don't – we don't have any way

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1 WATERHOUSE - 10-19-21  
 2 MS. DANDENEAU: I'm sorry, John, did  
 3 you say Exhibit 2 or Exhibit 1?  
 4 MR. MORRIS: It is Exhibit 2 in the  
 5 binders so it is premarked Exhibit 2. And  
 6 now I'm asking – right there – going to  
 7 Exhibit 1 to the document that was marked  
 8 as Exhibit 2.  
 9 MS. DANDENEAU: Got it. In the  
 10 binder there is no –  
 11 MS. DEITSCH-PEREZ: There is no  
 12 Exhibit 1.  
 13 MR. MORRIS: All right. So look at  
 14 the one on the screen.  
 15 Q. Do you see, Mr. Waterhouse, that  
 16 this is a promissory note dated May 31st, 2017,  
 17 in the approximate amount of \$30.7 million?  
 18 A. Yes.  
 19 Q. And do you see that the maker of the  
 20 note is NexPoint?  
 21 A. Yes.  
 22 Q. And that Highland is the payee; is  
 23 that right?  
 24 A. Yes.  
 25 Q. Okay. And do you see in Paragraph 2

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1 WATERHOUSE - 10-19-21  
 2 of verifying that, we're just –  
 3 MR. MORRIS: You do, actually. You  
 4 could just go to Docket No. 21-3004.  
 5 MS. DEITSCH-PEREZ: If you want to  
 6 stop this deposition so we can go and pull  
 7 that document up, we're happy to do it. So  
 8 I am just asking you for your  
 9 representation.  
 10 MR. MORRIS: Sure. I gave that.  
 11 MS. DEITSCH-PEREZ: Okay.  
 12 Q. So do you see that this is a  
 13 document that was actually filed with the Court  
 14 by Highland Capital Management Fund Advisors?  
 15 A. No. I get with the first page in  
 16 the section. Maybe I'm looking at the wrong  
 17 thing. It says, Highland Capital Management.  
 18 Q. Don't worry about it. Don't worry  
 19 about it.  
 20 A. Maybe I went back – okay.  
 21 MR. MORRIS: All right. Can we put  
 22 up on the screen Exhibit 2.  
 23 (Exhibit 2 marked.)  
 24 MR. MORRIS: I think it is  
 25 Exhibit 1.

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1 WATERHOUSE - 10-19-21  
 2 this is an annual installment note?  
 3 A. Can you scroll down.  
 4 Q. Sure.  
 5 MR. MORRIS: Can we scroll down –  
 6 yeah, there you go.  
 7 A. Right there, yeah. Yes.  
 8 MR. MORRIS: And can we scroll down  
 9 to the signature line.  
 10 Q. And do you recognize that as  
 11 Mr. Dondero's signature?  
 12 A. Yes.  
 13 Q. And is this the promissory note that  
 14 we talked about earlier where NexPoint had made  
 15 certain payments in the aggregate amount of  
 16 about 6 to \$7 million against principal and  
 17 interest?  
 18 A. I don't recall discussing the  
 19 aggregate principal amounts of 6 to \$7 million,  
 20 but – so I don't – I don't recall that prior  
 21 discussion with those amounts.  
 22 Q. All right. Let's take a look.  
 23 NexPoint always included this promissory note  
 24 as a liability on its audited financial  
 25 statements; right?

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1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. And NexPoint had its financial  
 4 statements audited; isn't that correct?  
 5 A. Yes.  
 6 Q. And was the process of NexPoint's  
 7 audit similar to the process you described  
 8 earlier for Highland and HCMFA?  
 9 A. Yes, it is similar.  
 10 Q. Okay.  
 11 MR. MORRIS: Can we put up  
 12 NexPoint's audited financials and let  
 13 everybody know what exhibit number it is,  
 14 La Asia?  
 15 MS. CANTY: It is going to be  
 16 Exhibit 46.  
 17 (Exhibit 46 marked.)  
 18 Q. And do you see, sir, that we've put  
 19 up NexPoint Advisors' consolidated financial  
 20 statements and supplemental information for the  
 21 period ending December 31st, 2019?  
 22 A. Yes.  
 23 Q. Did you participate in the process  
 24 whereby these audited financial statements were  
 25 issued?

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1 WATERHOUSE - 10-19-21  
 2 balance sheet on page 3? Okay. Stop right  
 3 there.  
 4 Q. Do you see under the liabilities  
 5 section, the last item is note payable to  
 6 affiliate?  
 7 A. Yes.  
 8 Q. And is that the note that we just  
 9 looked at?  
 10 MS. DANDENEAU: Objection to form.  
 11 Q. Withdrawn.  
 12 Is that the approximately  
 13 \$30 million note that we just looked at that  
 14 was dated from 2017?  
 15 MS. DANDENEAU: Objection to form.  
 16 A. I believe no.  
 17 Q. Okay. You're not aware of any other  
 18 note that was outstanding from NexPoint to  
 19 Highland as of the end of the year 2019, other  
 20 than that one \$30 million note; right?  
 21 A. I don't recall.  
 22 Q. And as of the end of 2019, the  
 23 principal amount that was due on the note was  
 24 approximately \$23 million; right?  
 25 MS. DEITSCH-PEREZ: Object to the

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1 WATERHOUSE - 10-19-21  
 2 A. I didn't participate directly, as  
 3 I've described before, about the – the team  
 4 performing the audit.  
 5 Q. Do you recall when the audit of  
 6 NexPoint's financial statements for the period  
 7 ending December 31st, 2019 was completed?  
 8 A. Yes.  
 9 Q. And when do you recall it being  
 10 completed?  
 11 A. In January of 2021.  
 12 Q. Do you know why the 2019 audit  
 13 report wasn't completed until January of 2021?  
 14 A. Yes.  
 15 Q. Why was the NexPoint audit report  
 16 for the period ending 12/31/19 not completed  
 17 until January 2021?  
 18 A. Because we had to deal with working  
 19 from home from – with COVID, and on top of all  
 20 of our daily responsibilities and job duties  
 21 at – at providing – at Highland providing  
 22 services to NexPoint, we had to do all of this  
 23 extra work for a bankruptcy that was filed in  
 24 October of 2019.  
 25 MR. MORRIS: Can we go to the

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1 WATERHOUSE - 10-19-21  
 2 form.  
 3 A. Approximately.  
 4 Q. And does that refresh your  
 5 recollection that between the time the note was  
 6 executed and the end of 2019, that NexPoint had  
 7 paid down approximately \$7 million?  
 8 A. Yes. If we are just doing the math,  
 9 yes.  
 10 Q. Okay. Did NexPoint complete its  
 11 audit from 2020?  
 12 A. Sorry, you kind of broke up. Do  
 13 NexPoint complete?  
 14 Q. The audit of its financial  
 15 statements for the period ending December 31st,  
 16 2020?  
 17 A. No.  
 18 Q. No, it's not complete?  
 19 A. No, it is not complete.  
 20 Q. Did HCMFA complete its audit for the  
 21 year ending December 31st, 2020?  
 22 A. No.  
 23 MR. MORRIS: Can we go to page 15,  
 24 please, the paragraph at the bottom.  
 25 Q. Do you see that NexPoint has



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1 WATERHOUSE - 10-19-21  
 2 included under notes payable to Highland a  
 3 reference to the amounts that were outstanding  
 4 as of the year-end 2019 under the note that we  
 5 looked at just a moment ago?  
 6 A. Yes. Are you talking about the  
 7 second paragraph?  
 8 Q. I'm actually talking about first  
 9 paragraph. Do you understand that the first  
 10 paragraph is a reference to the 2017 note, and  
 11 the amounts that were -- the principal amount  
 12 that was outstanding as of the end of 2019?  
 13 MS. DANDENEAU: Objection to form.  
 14 John, do you mean the first paragraph of  
 15 that page?  
 16 MR. MORRIS: No, the first paragraph  
 17 under notes payable to Highland.  
 18 A. Yeah, I see the paragraph, and  
 19 again, this is what I answered earlier. I  
 20 believe so, just because I don't -- again, this  
 21 is a number in a balance sheet, and without  
 22 matching it up and seeing the detail with the  
 23 schedule like I kind of talked about for  
 24 Highland's financial statements, it is a little  
 25 bit more difficult to tie everything in

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1 WATERHOUSE - 10-19-21  
 2 \$30 million 2017 note that we looked at a  
 3 moment ago?  
 4 A. Well, we're at the bottom of the  
 5 page. Is there anything on page 16?  
 6 Q. That is a fair question, sure. That  
 7 is it.  
 8 A. Okay. So it appears that that is  
 9 the only note that is detailed in the notes in  
 10 the financial statement.  
 11 Q. And you don't have any memory of any  
 12 other note other than the 2017 note, right,  
 13 being outstanding as of the end of the year?  
 14 A. I deal with thousands of  
 15 transactions every year. I don't really have a  
 16 very specific memory for what exactly was  
 17 outstanding.  
 18 MR. MORRIS: Why don't we take a  
 19 break now. We've been going for a little  
 20 while. It's 3:26. Let's come back at  
 21 3:40.  
 22 VIDEOGRAPHER: We're going off the  
 23 record at 3:26 p.m.  
 24 (Recess taken 3:26 p.m. to 3:39 p.m.)  
 25 VIDEOGRAPHER: We are going back on

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1 WATERHOUSE - 10-19-21  
 2 perfectly together.  
 3 Q. Okay. But you're not aware of any  
 4 note that was outstanding at the end of 2019  
 5 from NexPoint to Highland other than whatever  
 6 principal was still due and owing under the  
 7 \$30 million note issued in 2017; correct?  
 8 A. Well, it -- I don't -- there is  
 9 reference in the second paragraph. I don't --  
 10 I don't -- I don't recall what that is  
 11 referring to, so I don't -- I don't know.  
 12 Q. Well, if you listen carefully to my  
 13 question, right, I'm asking about notes that  
 14 were outstanding at the end of 2019, and if we  
 15 look at the paragraph you just referred to, it  
 16 says that during the year there were new notes  
 17 issued totaling \$1.5 million, but by the end of  
 18 the year, no principal or interest was  
 19 outstanding on the notes.  
 20 Do you see that?  
 21 A. Oh, I do, yes.  
 22 Q. So does that refresh your  
 23 recollection that there were no notes  
 24 outstanding from NexPoint to Highland other  
 25 than the principal remaining under the original

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1 WATERHOUSE - 10-19-21  
 2 the record at 3:39 p.m.  
 3 Q. All right. Mr. Waterhouse, we -- I  
 4 don't think we have a lot more here.  
 5 To the best of your knowledge and  
 6 recollection, were all affiliate loans and all  
 7 loans made to Mr. Dondero recorded on  
 8 Highland's books and records as assets of  
 9 Highland?  
 10 MS. DANDENEAU: Object to the form,  
 11 asked and answered.  
 12 A. To my knowledge, yes.  
 13 Q. Okay. Can you recall any loan to  
 14 any affiliate or Mr. Dondero that was not  
 15 recorded on Highland's books and records as an  
 16 asset?  
 17 A. Like during my time as CFO? I don't  
 18 recall.  
 19 Q. How about after the time that you  
 20 were CFO? Did you recall that there was a loan  
 21 by Highland to an affiliate or to Mr. Dondero  
 22 that hadn't been previously recorded on  
 23 Highland's books as an asset?  
 24 MS. DANDENEAU: Objection to form.  
 25 A. I guess I don't understand the

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1 WATERHOUSE - 10-19-21  
 2 question. I left Highland as of – I'm not  
 3 aware of – I left Highland in February –  
 4 probably the last day of February of 2021.  
 5 Q. Okay.  
 6 A. I'm not – I'm not aware of any –  
 7 I'm not aware of anything past that date.  
 8 Q. Okay. While you were the CFO at  
 9 Highland, did Highland prepare in the ordinary  
 10 course of business a document that reported  
 11 operating results on a monthly basis?  
 12 A. Yes.  
 13 Q. And are you generally familiar with  
 14 the monthly operating reports?  
 15 A. Yeah. You are referring to the  
 16 reports that we filed to the Court every month?  
 17 Q. I apologize, I'm not. I'm taking  
 18 you back to the pre-petition period. There was  
 19 a report that I have seen that I'm going to  
 20 show you, but I'm just asking for your  
 21 knowledge.  
 22 MR. MORRIS: Let's put it up on the  
 23 screen, Exhibit 39.  
 24 (Exhibit 39 marked.)  
 25 Q. Do you see this is a document that

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Do you see that this one  
 3 is – is dated February 2018?  
 4 A. Yes.  
 5 Q. Do you have – do you believe –  
 6 have you ever seen a document that was  
 7 purporting to report operating results for  
 8 Highland?  
 9 MS. DANDENEAU: Objection to form.  
 10 A. Yes.  
 11 Q. Okay. And when you say that you  
 12 don't believe it was produced on a monthly  
 13 basis, was it produced on any periodic bases to  
 14 the best of your recollection?  
 15 A. I believe it was – it was prepared  
 16 on an annual basis.  
 17 Q. Okay.  
 18 MR. MORRIS: Can we look at the next  
 19 page.  
 20 Q. Do you see that there is a statement  
 21 here called: Significant items impacting  
 22 HCMLP's balance sheet?  
 23 And it is dated February 2018.  
 24 A. Yes.  
 25 Q. Do you recall that there was a

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1 WATERHOUSE - 10-19-21  
 2 is called operating results?  
 3 A. Yeah, that's the title of it.  
 4 Q. Okay. And was a report of operating  
 5 results prepared by Highland on a monthly basis  
 6 during the time that you served as CFO?  
 7 A. No.  
 8 Q. Are you familiar with a document of  
 9 this type? And we can certainly look at the  
 10 next page or two to refresh your recollection.  
 11 A. I'm just looking at the title. I  
 12 don't really – again, as I discussed before, I  
 13 don't have any records or documents or emails  
 14 or appointments or anything that I was able to  
 15 use prior to – prior to this deposition, so  
 16 I'm doing the best I can.  
 17 Q. Okay. You don't need to apologize.  
 18 I'm just asking you if you are familiar with  
 19 the document called Operating Results that was  
 20 prepared on a monthly basis at Highland?  
 21 MS. DEITSCH-PEREZ: Object to the  
 22 form.  
 23 Q. If you're not, you're not.  
 24 A. I don't believe this was prepared on  
 25 a monthly basis.

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1 WATERHOUSE - 10-19-21  
 2 report that Highland prepared that identified  
 3 significant items impacting the balance sheet?  
 4 A. A report that was prepared.  
 5 Q. Let me ask a better question: Did  
 6 Highland prepare reports to the best of your  
 7 recollection that identified significant items  
 8 that impacted its balance sheet?  
 9 A. Well, so Highland prepared a – a  
 10 monthly close package. And maybe I'm  
 11 getting – and – and maybe change names at one  
 12 time or maybe I'm just – again, just  
 13 misremembering – but in that, yes, there is a  
 14 page that would detail just changes in – you  
 15 know, just changes month over month on the  
 16 balance sheet.  
 17 Q. Okay. And maybe it is my fault.  
 18 Maybe I didn't know the proper name for it.  
 19 But let's use the phrase "monthly close  
 20 package."  
 21 Did Highland prepare a monthly close  
 22 package in the ordinary course of business  
 23 during the time that you served as CFO?  
 24 MS. DANDENEAU: Objection to form.  
 25 A. Yes.

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1 WATERHOUSE - 10-19-21  
 2 Q. And did the monthly close package  
 3 that Highland prepared include information  
 4 concerning significant items that impacted  
 5 Highland's balance sheet?  
 6 A. Yes, it had a page like that is –  
 7 that is on the screen that detailed items  
 8 like – of that nature.  
 9 Q. And do you know who – was there  
 10 anybody at Highland who was responsible for  
 11 overseeing the preparation of the monthly  
 12 reporting package?  
 13 A. That would have been – again, it  
 14 varies over time during my tenure as CFO.  
 15 It – it varied over – over time, but – but  
 16 typically a – a corporate accounting manager.  
 17 Q. And who were the corporate  
 18 accounting managers during your tenure as CFO?  
 19 A. It would have been Dave Klos and  
 20 Kristin Hendrix.  
 21 Q. And did the corporate accounting  
 22 manager deliver to you drafts of the monthly  
 23 close package before it was finalized?  
 24 A. Sometimes.  
 25 Q. Was that the practice even if there

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1 WATERHOUSE - 10-19-21  
 2 A. And, quite frankly, I don't even  
 3 know if these were – these were sent to me  
 4 even in any capacity.  
 5 Q. What was the purpose of preparing  
 6 the monthly reporting package – withdrawn.  
 7 What was the purpose of preparing  
 8 the monthly close package?  
 9 MS. DEITSCH-PEREZ: Object to the  
 10 form.  
 11 A. The – the original purpose was so  
 12 that it would just – it would be a report that  
 13 was reviewed monthly with senior management.  
 14 Q. Who was included in the idea of  
 15 senior management?  
 16 A. You know, I think originally when  
 17 this was conceived that would have been like  
 18 Jim Dondero and Mark Okada.  
 19 Q. Were monthly reporting – withdrawn.  
 20 Were monthly close packages prepared  
 21 to the best of your knowledge until the time  
 22 you left Highland?  
 23 A. To my knowledge – I don't know,  
 24 actually. I mean, to my knowledge, I believe  
 25 it was being – that was still being done. I

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1 WATERHOUSE - 10-19-21  
 2 were exceptions to the practice?  
 3 A. The practice meaning that they  
 4 sometimes lured them to me?  
 5 Q. That that was the expectation even  
 6 if circumstances prevented that from happening  
 7 from time to time.  
 8 MS. DEITSCH-PEREZ: Object to the  
 9 form.  
 10 A. I – I would say it started out that  
 11 way but over the years it – it was not  
 12 enforced.  
 13 Q. Okay. So you were – you reviewed  
 14 and approved monthly – monthly reporting  
 15 packages for a certain period of time and then  
 16 over time you stopped doing that.  
 17 Do I have that right?  
 18 MS. DANDENEAU: Objection to form.  
 19 A. Yes, I mean, if you're talking about  
 20 a formal meeting where we sit down and go  
 21 through and approve it. I would say that was  
 22 standard practice a decade – you know, early  
 23 on. And as time went on that – that – that  
 24 practice wasn't followed.  
 25 Q. Okay.

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1 WATERHOUSE - 10-19-21  
 2 don't know because, again, I wasn't reviewing  
 3 them. I hadn't reviewed a close package for –  
 4 for a long time. But I believe the standard  
 5 practice that was still being carried out.  
 6 Q. Did you ever have any discussions  
 7 with the debtor's independent board concerning  
 8 any promissory notes that were issued by any of  
 9 the affiliates or Mr. Dondero?  
 10 A. I can't – I can't – I can't recall  
 11 specifically.  
 12 Q. Did you speak with the independent  
 13 board from time to time?  
 14 A. Yes, from – from – from time to  
 15 time I had discussions with the independent  
 16 board members, you know, either – either, you  
 17 know, by themselves or wholly, you know, as –  
 18 as a – as a combined work.  
 19 Q. Okay. Before we talk about  
 20 Mr. Seery, do you recall ever having a  
 21 conversation with Mr. Nelms or Mr. Dubel  
 22 concerning any promissory note that was  
 23 rendered by one of the affiliates or  
 24 Mr. Dondero to Highland?  
 25 A. I don't recall any conversations

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1 WATERHOUSE - 10-19-21  
 2 specifically.  
 3 Q. Do you know if the topic was ever  
 4 discussed, even if you don't remember it  
 5 specifically?  
 6 MS. DANDENEAU: Objection to form.  
 7 A. It – it – it may have. I don't  
 8 know. I don't recall.  
 9 Q. Do you recall ever discussing any  
 10 promissory note issued by any of the affiliates  
 11 or Mr. Dondero with James Seery?  
 12 A. I don't – I don't recall  
 13 specifically.  
 14 Q. Do you recall generally ever  
 15 discussing the topic of promissory notes issued  
 16 by any of the affiliates or Mr. Dondero to  
 17 Highland with Mr. Seery?  
 18 A. Nothing – nothing is really jumping  
 19 out at me.  
 20 Q. Do you recall if you ever told  
 21 Mr. Seery that any of the affiliates or  
 22 Mr. Dondero didn't have an obligation to pay  
 23 all amounts due and owing under their notes?  
 24 A. I don't recall having that  
 25 conversation.

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1 WATERHOUSE - 10-19-21  
 2 anything that – that said I have concerns over  
 3 these notes?  
 4 Q. No. Let me try again. Maybe it was  
 5 my question.  
 6 Did you ever give Mr. Seery any  
 7 information concerning any of the notes that  
 8 were issued by any of the affiliates or  
 9 Mr. Dondero?  
 10 MS. DANDENEAU: Objection to form.  
 11 A. I don't recall if I did or not. I  
 12 don't – I don't remember. I mean, you have my  
 13 emails. You may have asked. Again, I don't –  
 14 I don't know.  
 15 MR. MORRIS: Can we put up the  
 16 document that has been premarked as Exhibit  
 17 39?  
 18 MS. DANDENEAU: John, that is this  
 19 document, isn't it?  
 20 MR. MORRIS: Oh, yeah, it might be,  
 21 as a matter of fact. Let's go to Number  
 22 40.  
 23 (Exhibit 40 marked.)  
 24 Q. During the bankruptcy,  
 25 Mr. Waterhouse, did you prepare documents that

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1 WATERHOUSE - 10-19-21  
 2 Q. Did you ever tell Mr. Seery that you  
 3 had any reason to believe that the amounts  
 4 reflected in the notes issued by the affiliates  
 5 and Mr. Dondero were invalid for any reason?  
 6 A. I don't – I don't recall.  
 7 Q. Did you tell Mr. Dondero – did you  
 8 tell Mr. Seery that you thought the promissory  
 9 notes issued by the advisors and Mr. Dondero  
 10 that were outstanding as of the petition date  
 11 were assets of the estate?  
 12 A. I don't recall having a specific  
 13 conversation about those – you know, those  
 14 notes outstanding as – as of the petition date  
 15 being assets on the estate. I mean, we put  
 16 together – you know, they're in the books and  
 17 records of the financial statements. I don't  
 18 recall having a specific conversation.  
 19 Q. Did you ever prepare any documents  
 20 that were delivered to Mr. Seery that concerned  
 21 the promissory notes issued by any of the  
 22 affiliates or Mr. Dondero?  
 23 MS. DANDENEAU: Objection to form.  
 24 A. Did I produce any that concerned –  
 25 you mean did I just – did I give Mr. Seery

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 2 were filed with the bankruptcy court?  
 3 A. I didn't – I didn't prepare them  
 4 personally.  
 5 Q. Did people prepare them under your  
 6 direction?  
 7 A. Yes. There were members of the team  
 8 that prepared them, and they worked in – you  
 9 know, there were members of DSI that were  
 10 involved in the process as well.  
 11 Q. To the best of your knowledge, did  
 12 DSI rely on the employees of Highland for the  
 13 information that they used to prepare the  
 14 bankruptcy filings?  
 15 A. Yes. The books and records were  
 16 with the Highland personnel.  
 17 Q. Okay. And do you see on the screen  
 18 here, there is a document that we have marked  
 19 as Exhibit 40 that is – that is titled Summary  
 20 of Assets and Liabilities?  
 21 A. Uh-huh.  
 22 Q. Okay. And do you recall reviewing  
 23 any summary of assets and liabilities before it  
 24 was filed with the bankruptcy court?  
 25 A. Yes, I recall reviewing this at a

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 2 high level.  
 3 Q. And did you believe that it was  
 4 accurate at the time it was filed?  
 5 A. I didn't have any other reason to  
 6 believe otherwise.  
 7 Q. Okay. Do you see that the total  
 8 value of all properties listed in Part 1 is  
 9 approximately \$410 million?  
 10 MS. DEITSCH-PEREZ: Objection to  
 11 form.  
 12 A. Yes, it is in 1c.  
 13 Q. Yes.  
 14 A. Yes, I see that.  
 15 Q. Okay. If we go to the second page,  
 16 now I think I may just have excerpts here, just  
 17 so everybody is clear, but if we scroll down to  
 18 the second page, you will see that there is  
 19 a – a little further. There you go. You will  
 20 see there is a reference to Item 71, notes  
 21 receivable.  
 22 Do you see that?  
 23 A. I do.  
 24 Q. And that was a reference to the  
 25 notes receivable from the affiliates and

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 2 Q. Okay.  
 3 A. You know, but as of the time of this  
 4 filing, that is what was put in this filing,  
 5 right, but, you know, I mean, numbers –  
 6 numbers change, facts and circumstances change.  
 7 Q. But as the CFO of Highland, the  
 8 debtor in bankruptcy, did you believe that this  
 9 number accurately reflected the total amount  
 10 due under the notes receivable?  
 11 A. That is what we had in our books and  
 12 records.  
 13 Q. Okay. And did you believe as the  
 14 CFO that the books and records accurately  
 15 reported the then value of the debtor's assets?  
 16 MS. DANDENEAU: Objection to form.  
 17 A. We didn't – as part of this filing,  
 18 there was no fair value measurement or  
 19 anything. These were just accounting entries  
 20 for the promissory notes. There is no analysis  
 21 for impairment or fair market value adjustments  
 22 or anything of that nature. This is purely  
 23 taking numbers and putting them in our form.  
 24 Q. Did you do any impairment analysis  
 25 at any time while you were employed by

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 2 Mr. Dondero, among others; is that right?  
 3 MS. DANDENEAU: Objection to form.  
 4 A. Yes. The affiliate notes and the  
 5 Dondero notes were in this amount, but they  
 6 weren't – again, like you said, and among  
 7 others.  
 8 Q. Okay. We will look at the  
 9 specificity because I'm not playing gaming  
 10 here, but do you know if the \$150 million of  
 11 notes receivable was included within the  
 12 \$410 million of total value of the debtor's  
 13 assets?  
 14 MS. DANDENEAU: Objection to form.  
 15 A. I – I – I believe so.  
 16 Q. Right. And so is it fair to say  
 17 that as of the date this document was prepared,  
 18 the notes receivable were more than one-third  
 19 of the value of the debtor's assets?  
 20 MS. DEITSCH-PEREZ: Object to the  
 21 form.  
 22 MS. DANDENEAU: Object to the form.  
 23 A. Again, if you are just taking the  
 24 math, 150 divided by whatever the \$400 million  
 25 number is above, then yes, you get there.

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 2 Highland?  
 3 A. Yes, we did do impairment analysis  
 4 on – on assets.  
 5 Q. Okay. Did you ever do an impairment  
 6 analysis on any of the promissory notes that  
 7 were given to Highland by any of the affiliates  
 8 or Mr. Dondero?  
 9 A. Not that I recall.  
 10 Q. Under what circumstances do you  
 11 prepare impairment analyses?  
 12 A. As – as – if you're preparing  
 13 financials in accordance with GAAP, generally  
 14 accepted accounting principles, if you're  
 15 preparing full GAAP financials, you should be  
 16 preparing – you should be undergoing on a  
 17 periodic basis any fair market value  
 18 adjustments to assets.  
 19 As I was instructed at the time of  
 20 the petition date, we weren't producing GAAP  
 21 financials. So this wasn't something I was  
 22 worried about nor concerned about.  
 23 Q. Okay. Were NexPoint and HCMFA and  
 24 Highland's audited financial statements  
 25 prepared in accordance with GAAP?

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 2 A. The audited financials – yes,  
 3 audited financial statements are prepared in  
 4 accordance with GAAP.  
 5 Q. Do you recall whether any of  
 6 Highland or HCMFA or NexPoint ever made a fair  
 7 market value adjustment to any of the notes  
 8 issued by any of the affiliates or Mr. Dondero  
 9 to Highland?  
 10 A. I do not recall that happening, but  
 11 the – it is because under – under GAAP,  
 12 the – the treatment of liabilities is  
 13 different than assets.  
 14 Q. Okay. So then let's just focus on  
 15 Highland's audited financial statements.  
 16 The last audited financial  
 17 statements were for the period ending December  
 18 31st, 2018; correct?  
 19 A. That is my understanding.  
 20 Q. And you had – you had an obligation  
 21 to disclose anything to PricewaterhouseCoopers  
 22 concerning any subsequent events between the  
 23 end of 2018 and June 3rd, 2019; correct?  
 24 MS. DANDENEAU: Objection to form.  
 25 MS. DEITSCH-PEREZ: Form.

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 2 Q. Okay. So now let's look at that  
 3 schedule. So this was the face amount of all  
 4 of the promissory notes that Highland held at  
 5 the time this document was filed with the  
 6 bankruptcy court; right?  
 7 A. Yes.  
 8 Q. There is a footnote there that says,  
 9 doubtful or uncollectible accounts are  
 10 evaluated at year-end.  
 11 Do you see that?  
 12 A. I do.  
 13 Q. Okay. And is it fair to say that as  
 14 of the year-end 2018, the year before this,  
 15 that to the extent any of these notes were  
 16 outstanding at that time, they weren't deemed  
 17 to be doubtful or uncollectible?  
 18 A. Yeah. For the 2018 audit, there  
 19 weren't any – there weren't any adjustments to  
 20 fair value.  
 21 Q. Okay. And during the bankruptcy, do  
 22 you recall that Highland subsequently reserved  
 23 for the Hunter Mountain Investment Trust note?  
 24 A. Yes.  
 25 Q. Why did Highland – were you

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 2 A. Correct.  
 3 Q. Okay. To the best of your  
 4 knowledge, as Highland's CFO, did Highland ever  
 5 make any fair market value adjustments to any  
 6 of the promissory notes that were carried on  
 7 its balance sheet and that were issued by any  
 8 of the affiliates or Mr. Dondero?  
 9 A. I think I answered that question  
 10 earlier. I don't recall doing that for any of  
 11 the – those – those notes. So it would have  
 12 included the audit for the – for the 2018  
 13 period.  
 14 Q. Okay.  
 15 MR. MORRIS: Can we go to the next  
 16 page.  
 17 Q. Do you see this is a note a list of  
 18 notes receivable? Do you see that?  
 19 A. Yes, I do.  
 20 Q. And do you see that this ties into  
 21 the page that we were just looking?  
 22 A. I'm sorry, can we go back to the  
 23 prior page? I mean, it was at 150,331,222. It  
 24 was on the prior page. Next page. Yes, it  
 25 agrees.

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 2 involved in the decision to reserve the Hunter  
 3 Mountain Investment Trust note?  
 4 A. I was not.  
 5 Q. Do you know why Highland decided to  
 6 reserve for the Hunter Mountain Investment  
 7 Trust note?  
 8 A. I don't know yet decision was made.  
 9 I believe it was made by someone at DSI.  
 10 Q. Okay. I'm just asking if you know  
 11 why.  
 12 Did you ever ask anyone why they  
 13 reserved for that particular note?  
 14 A. I don't recall.  
 15 Q. Do you know whether the debtor  
 16 reserved for any other note on this list during  
 17 the bankruptcy?  
 18 A. Again, I don't recall. I wasn't  
 19 part of any process of – again, like any fair  
 20 value adjustments or anything to that degree.  
 21 Like I said, a lot of that was done by DSI and  
 22 it was kind of out of our court.  
 23 Q. Okay. Do you know if any note  
 24 receivable on this list was ever deemed by the  
 25 debtor to be doubtful or uncollectible?

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 2 A. I don't – I don't have a  
 3 recollection of every filing, so I don't know.  
 4 Q. Did you ever have a discussion with  
 5 anybody at any time about whether any of the  
 6 notes receivable on this list should be deemed  
 7 to be doubtful or uncollectible?  
 8 A. No. As I previously stated, we were  
 9 told we didn't have to keep GAAP financials.  
 10 We weren't having – you know, there is no  
 11 underlying audits being performed, so I mean,  
 12 it wasn't something I worried about.  
 13 MR. MORRIS: I move to strike.  
 14 Q. Did you ever have a conversation  
 15 with anybody about any of the notes receivable  
 16 and whether they should be deemed to be  
 17 doubtful or uncollectible? Did you have the  
 18 conversation, yes or no?  
 19 MS. DANDENEAU: Objection to form.  
 20 A. I don't recall.  
 21 Q. Do you recall ever telling anybody  
 22 that you believed any of the notes receivable  
 23 on this list should be doubtful – should be  
 24 deemed to be doubtful or uncollectible?  
 25 MS. DANDENEAU: Objection to form.

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 2 MS. DEITSCH-PEREZ: This is like the  
 3 fifth time you've asked it. Object to the  
 4 form.  
 5 MR. MORRIS: I'm moving to strike,  
 6 if you haven't noticed, because he's not  
 7 answering the question.  
 8 MS. DEITSCH-PEREZ: He was answering  
 9 the question, you just didn't like it, like  
 10 the answer.  
 11 MR. MORRIS: Good Lord.  
 12 Q. Go ahead, Mr. Waterhouse.  
 13 A. Again, I don't – we brought up a  
 14 myriad of issues at the start of the bankruptcy  
 15 case. I don't recall if this was one of them,  
 16 but, again, there are a lot of things we  
 17 couldn't change. Even, you know, I was told  
 18 status quo, blah, blah, blah, right, there is a  
 19 stay, you can't – you know, I don't recall  
 20 specifically, but that doesn't mean it didn't  
 21 happen.  
 22 MR. MORRIS: I move to strike.  
 23 Q. During the time that Highland was in  
 24 bankruptcy and you served as CFO, did you have  
 25 any reason to believe that any of the notes

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 2 A. I don't recall. I mean, it may have  
 3 happened, you know, again, when we initially  
 4 getting DSI up to speed and going through  
 5 financials, it may have happened, but I don't  
 6 recall specifically.  
 7 Q. While you were the CFO of Highland  
 8 during the time that the company was in  
 9 bankruptcy, did you have any reason to believe  
 10 that any of the notes receivable on this list  
 11 other than Hunter Mountain Investment Trust  
 12 should have been characterized as doubtful or  
 13 uncollectible?  
 14 MS. DANDENEAU: Objection to form.  
 15 MS. DEITSCH-PEREZ: Form.  
 16 A. I didn't know. I didn't form an  
 17 opinion. Bankruptcy was new to me. It still  
 18 is new to me, even after going through this.  
 19 So I really didn't know what to expect nor  
 20 really – you know, I didn't know.  
 21 MR. MORRIS: I move to strike.  
 22 Q. During the period of Highland's  
 23 bankruptcy when you were serving as CFO, did  
 24 you have any reason to believe any of the notes  
 25 on this list were doubtful or uncollectible?

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 2 receivable on this list were doubtful or  
 3 uncollectible?  
 4 MS. DEITSCH-PEREZ: Object to the  
 5 form.  
 6 A. Potentially.  
 7 Q. Did you ever tell anybody that?  
 8 A. As I just stated like five times,  
 9 yes, we – at the beginning after filing and we  
 10 were getting DSI and others up to speed, you  
 11 know, we had a myriad of discussions of a lot  
 12 of things and this was likely one of them. I  
 13 don't – but I don't recall specifically we  
 14 talked –  
 15 Q. I don't want to know – I don't want  
 16 to know what was –  
 17 MS. DEITSCH-PEREZ: Wait, wait.  
 18 Excuse me. Mr. Morris, you did not let him  
 19 finish his answer.  
 20 A. I spoke – we had – we were  
 21 bringing Fred Karesa and Brad Sharp (phonetic)  
 22 up to speed on all of these items, contracts,  
 23 and investments and going through – we had  
 24 hours and hours and hours of discussion. And  
 25 then not only do I have to repeat this not

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 2 once, twice, three, four times with – you  
 3 know, I mean, we – I don't – I don't remember  
 4 the sum culmination of all these discussions.  
 5 They all kind of blend together.  
 6 MR. MORRIS: Okay. I move to strike  
 7 and I will try one more time.  
 8 Q. Did you ever tell anybody at DSI  
 9 that you believed any of the notes receivable  
 10 on this list were doubtful or uncollectible?  
 11 MS. DANDENEAU: Object to form.  
 12 A. Potentially.  
 13 Q. Potentially you told them or  
 14 potentially they were doubtful or  
 15 uncollectible?  
 16 A. Potentially I told them that we  
 17 needed to look at the value of these – of  
 18 these assets.  
 19 Q. Okay. Did you – okay. It is  
 20 potential that you told them and it is  
 21 potentially that you didn't, right?  
 22 MS. DANDENEAU: Objection to form.  
 23 A. I've gone through that. I don't  
 24 recall specifically.  
 25 Q. So you should just – I don't want

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 2 five times? I mean, really I thought you  
 3 were – (overspeak.)  
 4 MR. MORRIS: Because he never  
 5 answered it.  
 6 MS. DEITSCH-PEREZ: Are you  
 7 listening to him?  
 8 MR. MORRIS: You know –  
 9 MS. DEITSCH-PEREZ: He basically  
 10 said that he had a conversation with DSI  
 11 that went over all of this stuff and that  
 12 conversation could have included the notes  
 13 but he doesn't recall specifically.  
 14 What more do you want him – to ask  
 15 of him?  
 16 MR. MORRIS: I want him – I would  
 17 love him to say – I would like him to  
 18 testify to the truth, and that is he has no  
 19 recollection.  
 20 MS. DEITSCH-PEREZ: Well, the truth  
 21 as you would like to see it, but – but he  
 22 is testifying truthfully. And I – and, by  
 23 the way, I move to strike that comment –  
 24 MR. MORRIS: Okay.  
 25 MS. DEITSCH-PEREZ: – because it

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 2 to tell what you to do. Do you have –  
 3 MS. DANDENEAU: Good.  
 4 Q. Other than – other than telling  
 5 them that they should look at the values, do  
 6 you have any recollection whatsoever of ever  
 7 having told anybody at DSI that any of the  
 8 notes receivable on this page were doubtful or  
 9 uncollectible?  
 10 MS. DEITSCH-PEREZ: Object to the  
 11 form.  
 12 MS. DANDENEAU: Objection.  
 13 A. I recall having general discussions  
 14 about everything on our balance sheet which  
 15 would have included these – these notes  
 16 receivable.  
 17 Q. Okay.  
 18 A. I don't recall specifically where  
 19 those discussions delved into.  
 20 Q. Do you recall any discussion at all  
 21 on the topic of whether any of these notes on  
 22 this list were doubtful or uncollectible?  
 23 MR. AIGEN: Mr. Morris, how on earth  
 24 is that question different from the  
 25 question that you just asked for the last

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 2 suggests that he has not testified  
 3 truthfully.  
 4 MR. MORRIS: I will ask my question  
 5 again. And if at any time you want to  
 6 direct him not to answer, that is your  
 7 prerogative.  
 8 Q. Mr. Waterhouse, do you have any  
 9 recollection at all of ever telling anybody  
 10 from DSI that any of these notes were doubtful  
 11 or uncollectible?  
 12 MS. DANDENEAU: Object to form.  
 13 A. I don't remember specifically.  
 14 Q. Do you remember generally that  
 15 specific topic?  
 16 A. We generally talked about assets,  
 17 values. If – we had discussions of that and  
 18 collectability in nature. I mean, of Highland,  
 19 the funds, the CLOs, the entire complex. We  
 20 had discussions like that, which is, you know,  
 21 as you look at a billion dollar consolidated  
 22 balance sheet.  
 23 So I generally remember – this is  
 24 billions of dollars, including these assets –  
 25 having discussions of this – of this type.



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 2 Q. Do you believe that an affiliate  
 3 loan on this list was doubtful or  
 4 uncollectible? Would you have told that to  
 5 DSI?  
 6 MS. DANDENEAU: Objection to form.  
 7 MS. DEITSCH-PEREZ: Object to form.  
 8 A. If we had, like – again, if we –  
 9 if – if we weren't preparing financial  
 10 statements in accordance with GAAP, and – you  
 11 know, if DSI at that point – they were –  
 12 again, I was new to bankruptcy.  
 13 The CRO is – we are delegating  
 14 everything to the CRO. All the decisionmaking.  
 15 Remember – remember when you and I went into  
 16 Delaware Court and we were saying DSI basically  
 17 does everything, remember this, Mr. Morris?  
 18 You were my counsel at the time, and  
 19 basically we're running everything through DSI.  
 20 That was what this was like in the early part.  
 21 Everything was communicated through  
 22 DSI. So DSI says this. DSI says that. That  
 23 is what we're doing, and we're pointing out  
 24 things to them.  
 25 Now, they decide what direction this

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 2 Q. But you signed them; correct?  
 3 A. My signature is on the MORs.  
 4 Q. And you signed them as the preparer  
 5 of the document; correct?  
 6 A. Yes, I did this pursuant to DSI's  
 7 instructions.  
 8 Q. Okay. You wouldn't have signed the  
 9 document if you didn't believe it to be  
 10 accurate; correct?  
 11 A. If I had reason to believe it  
 12 wasn't, presumably I wouldn't have signed it.  
 13 Q. Okay. And do you have any reason to  
 14 believe right now that any monthly operating  
 15 report that has your signature on it was  
 16 inaccurate in any way?  
 17 MS. DEITSCH-PEREZ: Object to the  
 18 form.  
 19 A. My understanding of the monthly  
 20 operating reports is we were filing them in  
 21 accordance with the standards set by the Court.  
 22 It wasn't – you know, again, I don't – you  
 23 know, it wasn't GAAP. It wasn't these other  
 24 standards, so I testified I didn't have  
 25 experience in this. The CRO was running the

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 2 goes.  
 3 Q. Did you point out that any of  
 4 these –  
 5 A. I don't recall specifically.  
 6 Q. Okay. At any time that you served  
 7 as Highland's CFO, did you ever point out to  
 8 DSI that any of these loans were doubtful or  
 9 uncollectible?  
 10 MS. DEITSCH-PEREZ: Object to the  
 11 form.  
 12 MS. DANDENEAU: Objection.  
 13 A. If you're asking me if I had a  
 14 conversation with DSI, if any of these loans  
 15 were doubtful or uncollectible, I don't recall  
 16 specifically.  
 17 Q. Do you recall that the debtor filed  
 18 on the docket monthly operating reports?  
 19 A. Yes.  
 20 Q. You prepared those personally,  
 21 didn't you?  
 22 MS. DEITSCH-PEREZ: Objection to  
 23 form.  
 24 A. I didn't personally prepare them,  
 25 the team did with DSI.

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 2 show. I followed their advice.  
 3 Q. But you assured yourself that  
 4 everything in the report was accurate before  
 5 you signed them; correct?  
 6 MS. DANDENEAU: Objection to form.  
 7 A. I trusted the guidance from the CRO  
 8 and their team and their experience and their  
 9 guidance for doing this for many, many, many  
 10 years to – to – to categorize and put things  
 11 in ways on the form.  
 12 You know, my team had – had not  
 13 filled out these forms before and needed all of  
 14 this guidance. I'm not an expert in this. I  
 15 have oversight of it. I signed the form. DSI  
 16 told me to.  
 17 Q. And you and your team are the source  
 18 of the information that DSI used to create the  
 19 reports; correct?  
 20 MS. DANDENEAU: Objection to form.  
 21 A. The books and records reside with  
 22 the – with – with the corporate accounting  
 23 team.  
 24 Q. Okay. And the corporate accounting  
 25 team was the corporate accounting team that was

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 2 under your direction; correct?  
 3 A. Yes.  
 4 Q. So -- so your team was responsible  
 5 for maintaining Highland's books and records;  
 6 correct?  
 7 A. I'm sorry, my team was responsible?  
 8 Q. Correct.  
 9 A. Yes. They -- they -- they were  
 10 the -- the -- the general ledger of Highland,  
 11 that responsibility was with the corporate  
 12 accounting team.  
 13 Q. The corporate accounting group  
 14 reported to you; correct?  
 15 A. Yes.  
 16 MR. MORRIS: Can we put up 41,  
 17 please.  
 18 (Exhibit 41 marked.)  
 19 Q. All right. You will see that this  
 20 is a report that is dated January 31st, 2020,  
 21 but it is for the month ending December 2019.  
 22 Do you see that?  
 23 A. I do.  
 24 Q. And you signed this report in your  
 25 capacity as the chief financial officer of

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 2 A. Again, I would have to see, just  
 3 like we did with the financial statements of  
 4 Highland and NexPoint, I would have to see a  
 5 detailed build, but, you know, if you look at  
 6 the other line items, you know, the only other  
 7 place it could be would be in -- in other  
 8 assets.  
 9 Q. Okay. And as a matter of  
 10 arithmetic, is it fair to say that is the value  
 11 of the assets due from affiliates was more than  
 12 25 percent of the value of Highland's total  
 13 assets as of 12/31/2019?  
 14 MS. DANDENEAU: Objection to form.  
 15 A. I'm really not doing the mental math  
 16 right now, so I've been going at this depo for  
 17 hours, so I'm really not -- you know --  
 18 Q. All right. No problem.  
 19 A. -- these are millions of dollars.  
 20 Q. Let's look at the Footnote 1,  
 21 please. Do you see there is a reference to the  
 22 Hunter Mountain note?  
 23 A. Yes, I see that in Footnote 1.  
 24 Q. Okay. And that's the reserve that  
 25 was taken against that note?

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 2 Highland; correct?  
 3 A. Yes.  
 4 Q. And you're the preparer -- you're  
 5 identified as the preparer of the report;  
 6 correct?  
 7 A. That is correct.  
 8 Q. Do you recall participating in the  
 9 preparation of monthly operating reports?  
 10 A. As I testified earlier, it was put  
 11 together, you know, with the team. The team  
 12 worked with DSI to put these monthly operating  
 13 reports together. We had no experience at this  
 14 time of the monthly operating reports or things  
 15 of this nature.  
 16 MR. MORRIS: Can you turn to the  
 17 next page, please.  
 18 Q. Do you see a line item under assets  
 19 due from affiliates?  
 20 A. Yes, I do.  
 21 Q. Okay. And to the best of your  
 22 knowledge and understanding, as the person who  
 23 is identified as the preparer of this report,  
 24 does that line item include the affiliate loans  
 25 that we've been talking about?

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 2 A. Yes, that is what this indicates.  
 3 Q. Okay. And were you aware that the  
 4 reserve was being taken on that it was?  
 5 A. I was -- I was aware, yeah, at some  
 6 point, yes.  
 7 Q. Okay. And are you aware of any  
 8 reserve being taken with respect to any other  
 9 note that was issued in favor of Highland?  
 10 A. Again, as I testified, we didn't go  
 11 through an analysis on -- on -- on the other  
 12 notes.  
 13 Q. Can we turn --  
 14 A. I believe -- I believe it says that  
 15 in Footnote 1, fair value has not been  
 16 determined with respect to any of the notes.  
 17 So this footnote -- footnotes, look,  
 18 there has been no determination.  
 19 Q. Okay. The determination was made in  
 20 the audited financial statements just six  
 21 months earlier, right? We saw that earlier?  
 22 A. That was as of 12/31/18. I mean,  
 23 things -- circumstances -- there's a bank --  
 24 circumstances change, things change -- things  
 25 change over time, you know, facts and

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1 WATERHOUSE - 10-19-21  
 2 circumstances change. Again, you have to do an  
 3 analysis.  
 4 Q. Okay. And you do recall that in  
 5 Highland's 2018 financial statement, all of the  
 6 notes issued by affiliates and Mr. Dondero that  
 7 were due at year-end had a fair value equal to  
 8 the carrying value; correct? We looked at  
 9 that?  
 10 A. Yes. That was in the -- in the  
 11 disclosure for the -- for the affiliate notes,  
 12 yes.  
 13 Q. And -- and you were obligated to  
 14 share with PwC any subsequent events between  
 15 the end of 2018 and the date that you signed  
 16 your management representation letter on June  
 17 3rd, 2019; correct?  
 18 MS. DEITSCH-PEREZ: Object to the  
 19 form.  
 20 A. Yes. I -- I -- I signed the  
 21 management, you know, my signature is in the  
 22 management representation letter -- I hope I'm  
 23 answering your question -- that is dated in  
 24 June with the representations made in that  
 25 management representation letter.

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 2 you crazy, we're not auditing this. Values  
 3 change, all these things change, bankruptcy  
 4 changes the entire scenario. I mean -- and  
 5 they're like, we're not -- we're not touching  
 6 this.  
 7 And so, you know, I was like, okay,  
 8 sorry, I get it, okay, no an audit.  
 9 I mean, it is -- you know, and --  
 10 you know, and we weren't preparing GAAP  
 11 financial statements.  
 12 Again, I didn't know what we were  
 13 doing in relation to our financial statements,  
 14 but these were the discussions I was having at  
 15 the time. And yeah, I mean, filing bankruptcy  
 16 from what I got from outside auditors and  
 17 others involved changed things dramatically.  
 18 Q. Okay. Highland wasn't the obligor  
 19 under any of the notes that we're talking  
 20 about; correct?  
 21 A. No.  
 22 Q. So --  
 23 A. That's right.  
 24 Q. So can you identify any fact that  
 25 would cause the fair value to deviate from the

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. And there was nothing that  
 3 caused PricewaterhouseCoopers to include in  
 4 subsequent events any adjustment to the  
 5 conclusion that the fair value of the affiliate  
 6 notes and the notes issued by Mr. Dondero  
 7 equaled the carrying value; correct?  
 8 MS. DANDENEAU: Objection to the  
 9 form.  
 10 A. That is correct. That is what was  
 11 in the -- in the -- in the footnotes.  
 12 Q. Okay. So are you aware of anything  
 13 that occurred between June 3rd, 2019 and  
 14 December 31st, 2019 that would have caused the  
 15 fair value of the notes to differ from the  
 16 carrying value?  
 17 A. Yeah. Highland filed for  
 18 bankruptcy, things changed -- I mean, there was  
 19 a bankruptcy filed in October of -- of -- of  
 20 2019, right, the petition date that we've  
 21 described earlier.  
 22 I mean, I had a -- I guess looking  
 23 back naively, I thought we were going to get an  
 24 audit from PwC for year-ended 2019, and when we  
 25 had discussions with PwC, they were like, are

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1 WATERHOUSE - 10-19-21  
 2 carrying value during the seven-month period  
 3 between June 3rd and the end of the year, 2019?  
 4 MS. DANDENEAU: Objection to form.  
 5 A. No. I mean, I'm putting myself back  
 6 at that time, right. Hindsight is 2020, but we  
 7 didn't do an analysis, but we would have done a  
 8 fulsome analysis and looked at all of the facts  
 9 and circumstances at the time, but asset values  
 10 change. You know, there could have been a  
 11 market crash in hindsight in 2020, which --  
 12 which affected entities' abilities.  
 13 There could have been all of these  
 14 things, right, that -- that happen. It is --  
 15 it is easy to look back in hindsight, but when  
 16 you are looking at this in -- in realtime, the  
 17 analysis is different, and again, we didn't do  
 18 an analysis.  
 19 Q. Okay. You didn't do an analysis.  
 20 Do I have that right?  
 21 A. I don't -- I don't recall doing one  
 22 or maybe -- you know, I don't recall doing one.  
 23 MR. MORRIS: Okay. I'm going to  
 24 take a break. I may be done, so the time  
 25 now is -- is 4:30 your time. Let's just

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1 WATERHOUSE - 10-19-21  
 2 take a short break until 4:40 your time.  
 3 MS. DANDENEAU: Okay.  
 4 VIDEOGRAPHER: We're going off the  
 5 record, 4:31 p.m.  
 6 (Recess taken 4:31 p.m. to 4:43 p.m.)  
 7 VIDEOGRAPHER: We are back on the  
 8 record at 4:43 p.m.  
 9 MR. MORRIS: I have no further  
 10 questions.  
 11 MR. RUKAVINA: Okay.  
 12 Mr. Waterhouse, I will go next.  
 13 EXAMINATION  
 14 BY MR. RUKAVINA:  
 15 Q. Sir, my name is Davor Rukavina. I'm  
 16 the lawyer for –  
 17 MR. MORRIS: Hey, Davor, just before  
 18 you begin, I just want to put on the record  
 19 Highland's objection to documents that were  
 20 produced to me 10 minutes before the  
 21 deposition began.  
 22 MR. RUKAVINA: What the basis of  
 23 your objection?  
 24 MR. MORRIS: That they were due  
 25 quite some time ago, and the fact that you

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1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. You and I have never met or talked  
 4 before today, have we?  
 5 A. No, I have – I have heard your  
 6 voice on calls before.  
 7 Q. Okay.  
 8 MR. RUKAVINA: Madam Court Reporter,  
 9 I will use a few exhibits today. My  
 10 associate, Mr. Nguyen, will find some way  
 11 to get them to you. I don't know how to do  
 12 that, but it looks like you guys do.  
 13 I am going to use numbers as well.  
 14 But to differentiate them from Mr. Morris  
 15 we're going to mark mine with the prefix A  
 16 for advisors.  
 17 Do you understand?  
 18 COURT REPORTER: Yes.  
 19 MR. RUKAVINA: Okay. Perfect.  
 20 Q. Okay. So, Mr. Waterhouse, let's  
 21 start with those two HCMFA notes that you were  
 22 asked about, one for 5 million and one for  
 23 2.4 million.  
 24 Do you recall those notes?  
 25 A. Yes.

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1 WATERHOUSE - 10-19-21  
 2 had – I just think it's appropriate to –  
 3 to dump documents on somebody 10 minutes  
 4 before the deposition. I just think  
 5 that's –  
 6 MR. RUKAVINA: Well, these are  
 7 documents Highland produced. I'm not aware  
 8 of any rule I have to give you advance  
 9 documents when I know for the record that  
 10 other than the exhibits that you sent to us  
 11 last week, most of the exhibits you used  
 12 today you did not provide to me prior to  
 13 this deposition.  
 14 MR. MORRIS: No, but the documents  
 15 were produced by me in – in litigation,  
 16 right?  
 17 MR. RUKAVINA: I'm going to use  
 18 primarily, John, the documents that you  
 19 produced to me today, but you may.  
 20 MR. MORRIS: Primarily. I've got –  
 21 I've got my objection. You have got your  
 22 response. Proceed.  
 23 Q. Mr. Waterhouse, again, I represent  
 24 the advisors, HCMFA and NexPoint Advisors.  
 25 Do you understand that?

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1 WATERHOUSE - 10-19-21  
 2 Q. Were you ever the CFO of HCMFA?  
 3 A. I don't recall.  
 4 Q. So to the best of your recollection,  
 5 you were still an officer of HCMFA in 2019,  
 6 just that your title was treasurer?  
 7 MR. MORRIS: Object to the form of  
 8 the question. There is no leading here.  
 9 He works for your client.  
 10 MS. DANDENEAU: That is not – that  
 11 is not true.  
 12 MR. MORRIS: He's the treasurer –  
 13 he is the treasurer of your client. I  
 14 don't – I'm going to object every time you  
 15 try to lead, so...  
 16 MR. RUKAVINA: Totally fine to  
 17 object.  
 18 MR. MORRIS: Okay.  
 19 Q. Please answer my question,  
 20 Mr. Waterhouse.  
 21 A. I'm sorry, could you repeat? There  
 22 was...  
 23 Q. Yes. You were – you testified  
 24 earlier that in 2019 you were an officer of  
 25 HCMFA; correct?

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1 WATERHOUSE - 10-19-21  
 2 A. Yes, I testified that I was the  
 3 treasurer and I didn't know if that incumbency  
 4 certificate, you know, was one that appointed  
 5 me as a treasurer, but yes.  
 6 Q. I'm just trying to confirm that  
 7 sitting here today, to the best of your  
 8 recollection, at that time you were – your  
 9 title was treasurer. It was not chief  
 10 financial officer.  
 11 A. I don't recall that being my title.  
 12 Q. Okay. And in May of 2019, however,  
 13 I think you testified you were the chief  
 14 financial officer of the debtor; correct?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. Yes, I was – yes.  
 18 Q. Okay. As such, in May of 2019, did  
 19 you have the authority, to your understanding,  
 20 to unilaterally loan \$5 million or \$2.4 million  
 21 to anyone on behalf of the debtor?  
 22 MR. MORRIS: Objection to the form  
 23 of the question.  
 24 A. Sorry, can you repeat that?  
 25 Q. Yes. So in your capacity as the

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Now, I'm going to ask you a  
 3 similar question but for a different entity.  
 4 In May of 2019, as the treasurer of  
 5 HCMFA, did you believe that you unilaterally  
 6 had the ability to cause HCMFA to become the  
 7 borrower of a \$5 million loan and a  
 8 \$2.4 million loan?  
 9 MR. MORRIS: Objection to the form  
 10 of the question.  
 11 A. No.  
 12 Q. What would – what would the  
 13 approval have taken place – strike that.  
 14 What would the approval process have  
 15 been like in May of 2019 at HCMFA for HCMFA to  
 16 take out a \$7.4 million loan?  
 17 MR. MORRIS: Objection to the form  
 18 of the question.  
 19 A. The process would have been similar  
 20 to what we just discussed on – for Highland to  
 21 make a loan to others. So, again, you know,  
 22 we – we would have – either myself or someone  
 23 on the team would have discussed this with  
 24 the – the president and owner of – of HCMFA.  
 25 Q. And who was that individual?

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1 WATERHOUSE - 10-19-21  
 2 chief financial officer of the debtor, Highland  
 3 Capital Management, L.P., in May of 2019, did  
 4 you believe that you unilaterally, just Frank  
 5 Waterhouse, had the authority to loan on behalf  
 6 of the debtor to anyone \$5 million and  
 7 \$2.4 million?  
 8 MR. MORRIS: Objection to the form  
 9 of the question.  
 10 A. No.  
 11 Q. Is it because loans of that amount  
 12 would have had to be approved by someone else?  
 13 A. Yes.  
 14 Q. Who in '20 – in May of 2019, if  
 15 Highland wanted to loan 5 million or  
 16 \$2.4 million to someone, what would have been  
 17 the internal approval procedure?  
 18 MR. MORRIS: Objection to the form  
 19 of the question.  
 20 A. If – if we had loans of that nature  
 21 that needed to be made due to their size, we  
 22 would have gotten approval from the – the  
 23 president of Highland.  
 24 Q. And who that was individual?  
 25 A. It was James Dondero.

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1 WATERHOUSE - 10-19-21  
 2 A. That was James – Jim Dondero.  
 3 Q. So do I understand that in May of  
 4 2019, on behalf of both the lender, Highland,  
 5 and the borrower, HCMFA, Mr. Dondero would have  
 6 had to approve \$7.4 million in loans?  
 7 MR. MORRIS: Objection to the form  
 8 of the question.  
 9 A. Yes.  
 10 Q. You mentioned when Mr. Morris was  
 11 asking you the NAV error, N-A-V error, with  
 12 respect to TerreStar, without writing us a  
 13 novel, unless you feel like you have to, can  
 14 you summarize what that NAV error was? What  
 15 happened?  
 16 A. There was a – in the Highland  
 17 Global Allocation Fund, it owned at the time an  
 18 equity interest in a company called TerreStar.  
 19 And TerreStar is – at the time was a private  
 20 company, and it may still be today. Again, I'm  
 21 putting myself back then as a private company.  
 22 We had – sorry, I don't mean we –  
 23 the fund and the advisor used Houlihan Lokey  
 24 to – to value that investment. And during  
 25 that time there was some trades that were

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1 WATERHOUSE - 10-19-21  
 2 executed at market levels that were much lower  
 3 than the Houlihan Lokey model.  
 4 And based on information and  
 5 discussions with the portfolio managers and,  
 6 you know, principals that were very familiar  
 7 with TerreStar, it was determined that those  
 8 trades were non-orderly and they were not  
 9 considered in the valuation as consulted with  
 10 Houlihan Lokey and PricewaterhouseCoopers at  
 11 the time.  
 12 Subsequent to a – I can't remember  
 13 the exact circumstances of why the SEC got  
 14 involved. I think it was due to this – this  
 15 investment became a material position in the  
 16 fund. It triggered an SEC, kind of, inquiry.  
 17 And as part of that inquiry, they questioned  
 18 the valuation methodology. "They" meaning the  
 19 SEC.  
 20 And at the culmination of that  
 21 process – this is all summarized – the value  
 22 that was – that ultimately had to be used in  
 23 the fund's NAV was different than – materially  
 24 different than what the original valuation at  
 25 Houlihan Lokey provided.

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 2 A. I believe Cliff Stoops. I'm trying  
 3 to think. And maybe that is – that is – that  
 4 is – that is all kind I can recall at the  
 5 moment.  
 6 Q. Do you recall whether it was  
 7 determined that the fund suffered losses as a  
 8 result of this error?  
 9 A. The – the fund – the – the –  
 10 because the open-ended nature of the fund,  
 11 there were losses that were attributable to  
 12 investors. Meaning they – they would have  
 13 redeemed and got a less money or – or they  
 14 subscribed in and maybe because they didn't get  
 15 enough shares and then they later sold and then  
 16 they were harmed in that fashion.  
 17 And there is – there is – there  
 18 were very – there were very detailed  
 19 calculations and, you know, all these different  
 20 scenarios that we had to – I'm sorry, I keep  
 21 saying "we" – that the individuals involved  
 22 had to calculate and quantify.  
 23 Q. Well, do you recall whether HCMFA  
 24 admitted certain fault and liability for this  
 25 error?

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1 WATERHOUSE - 10-19-21  
 2 And given that there was this fund  
 3 was, as we discussed – I don't know if we  
 4 discussed it, but it was an open-ended fund  
 5 that was going – that was converting to a  
 6 close-end fund.  
 7 Due to the fact that it was an  
 8 open-ended fund, you had to recalculate NAV and  
 9 see what the impact was on people – on  
 10 investors coming in and out of the fund and if  
 11 there is a detrimental impact and to calculate  
 12 what that – what that impact was and if there  
 13 was any amounts owed to the fund pursuant to  
 14 the error.  
 15 Q. Were you personally involved  
 16 internally at either Highland or HCMFA with  
 17 these investigations and discussions with the  
 18 SEC?  
 19 A. I was.  
 20 Q. Which other key people or senior  
 21 people at Highland were involved, to your  
 22 recollection?  
 23 A. Myself, Thomas Surgent, David Klos,  
 24 Lauren Thedford, Jason Post.  
 25 Q. Mr. Dondero, was he –

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 2 A. I don't recall specifically.  
 3 Q. Do you recall whether HCMFA caused  
 4 any funds to be paid to the investors and the  
 5 fund the subject of the NAV error?  
 6 A. Yes.  
 7 Q. Do you recall the approximate amount  
 8 of funds, moneys paid to the investors and the  
 9 fund?  
 10 A. It was – it was approximately  
 11 \$7 million.  
 12 Q. If I was to suggest 7.8 million,  
 13 would that ring more true or are you sticking  
 14 with your original answer?  
 15 A. It was – it was approximately 7 –  
 16 7 to \$8 million. Again, I don't remember the  
 17 exact number, but it was in that ballpark.  
 18 Q. So regardless of whether HCMFA  
 19 accepted fault or liability, it caused some  
 20 \$7 million or more to be paid out to affected  
 21 investors in the fund?  
 22 MR. MORRIS: Objection to the form  
 23 of the question.  
 24 A. And I want to make sure I'm  
 25 understanding your question because there is a

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1 WATERHOUSE - 10-19-21  
 2 lot of different entities that are going on to  
 3 my head.  
 4 I think what you are saying is based  
 5 on this error, shareholders were harmed by this  
 6 approximately \$7.8 million – by approximately  
 7 \$7.8 million. Is that what you are asking?  
 8 Q. Yes, sir.  
 9 A. Yes, that was – again, I don't have  
 10 the exact numbers. If I take – it was – it  
 11 was in that ballpark, and there is a detail  
 12 calculation and write-up that could, that –  
 13 that exists someplace.  
 14 Q. Now, at that time, at the time that  
 15 the NAV error occurred, was there a contract in  
 16 place between HCMFA and the debtor pursuant to  
 17 which the debtor was providing services to  
 18 HCMFA?  
 19 MR. MORRIS: Objection to the form  
 20 of the question.  
 21 A. Yes.  
 22 Q. Was that contract generally called a  
 23 shared services agreement?  
 24 A. It was generally called that, but  
 25 there were – there were – I mean, it – it –

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1 WATERHOUSE - 10-19-21  
 2 Capital Management Fund Advisors and Highland  
 3 Capital Management for back office services.  
 4 Q. And can you summarize what you mean  
 5 by back office services?  
 6 A. Those services were for accounting,  
 7 finance, tax, valuation, HR, IT, you know,  
 8 legal compliance, things of – things of those  
 9 nature – or things of that nature, excuse me.  
 10 Q. So in the spring of 2019, do you  
 11 recall whether HCMFA took the position that it  
 12 was actually Highland that caused the NAV error  
 13 to occur pursuant to the valuation services  
 14 that Highland was providing?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. I do not recall.  
 18 Q. Did you ever have any discussions  
 19 with anyone, Jim Dondero or anyone in the first  
 20 half of 2019 as to whether Highland, the  
 21 debtor, that is, had any liability to HCMFA  
 22 related to the NAV error?  
 23 MR. MORRIS: Objection to the form  
 24 of the question.  
 25 A. I do not recall.

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 2 it depends on who you talk to, but yes,  
 3 generally, there were – there are multiple  
 4 agreements.  
 5 Q. Pursuant to one or more of those  
 6 agreements, was the debtor providing certain  
 7 services to HCMFA?  
 8 MR. MORRIS: Objection to the form  
 9 of the question.  
 10 A. Yes.  
 11 Q. And can you at a very high level  
 12 summarize in 2018 and 2019 what those services  
 13 were?  
 14 A. Yes, there was a – yes.  
 15 Q. Okay. Please – please go – go  
 16 through a short summary.  
 17 A. There was a – a cost reimbursement  
 18 agreement between Highland Capital Management  
 19 Fund Advisors and Highland Capital Management,  
 20 L.P. That agreement was for what we referred  
 21 to as front office services, so investment  
 22 management, things of that nature.  
 23 There was I think what most people  
 24 refer to as the shared services agreement that  
 25 was – that agreement was between Highland

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 2 Q. And then you mentioned that the fund  
 3 was being closed and some compensation related  
 4 to that. Can you – can you elaborate? What  
 5 were you referring to?  
 6 A. Right. So the advisor, pursuant to  
 7 board approval, put a proposal in front of the  
 8 shareholders of the Highland Global Allocation  
 9 Fund to convert it from an open-ended fund to a  
 10 closed-end fund.  
 11 So an open-ended fund, when  
 12 shareholders subscribe to the fund or redeem  
 13 into the fund, they do it at NAV.  
 14 When it is – when you have a  
 15 closed-end fund, closed-end funds are – are  
 16 publicly-traded, like on the New York Stock  
 17 Exchange, exchanges like that, and – and  
 18 shareholders or investors, they're not –  
 19 they're – they're not subscribing and  
 20 redeeming with the fund. They are like shares  
 21 of Apple.  
 22 Those shares of the Highland Global  
 23 Allocation Fund trade on an exchange, and that  
 24 is how you, you know, that is how, you know,  
 25 you become an equity owner in the fund or you

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1 WATERHOUSE - 10-19-21  
 2 sell your shares and you are no longer an  
 3 equity owner.  
 4 As part of that proposal, the  
 5 advisor told shareholders if you – if you vote  
 6 for this proposal to – to convert it from an  
 7 open-ended fund to a closed-end fund, we will  
 8 pay you some amounts of money. I forgot – a  
 9 certain number of points. I think it was  
 10 like – it was like two to three points or  
 11 something – something like that.  
 12 Q. Okay. You mentioned when Mr. Morris  
 13 was asking you, going back to those two  
 14 promissory notes, you will recall the 5 million  
 15 and 2.4 million, you mentioned something to the  
 16 effect that Mr. Dondero told – told you to pay  
 17 some moneys out of Highland. Do you remember  
 18 that discussion with Mr. Morris?  
 19 A. I do.  
 20 Q. So, to the best of your  
 21 recollection, did you have a discussion with  
 22 Mr. Dondero about making some payments in May  
 23 of 2019 out of Highland?  
 24 A. I recall, as I testified earlier,  
 25 that I had a conversation with Mr. Dondero

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 2 yes, I would say it was – it was all related  
 3 to that.  
 4 Q. Did Mr. Dondero tell you that those  
 5 funds would be a loan from Highland to HCMFA?  
 6 A. I don't recall.  
 7 MR. MORRIS: Objection to the form  
 8 of the question.  
 9 Q. Now, and forgive me, I'm probably  
 10 the only non-American born here, but I speak  
 11 reasonably well in English. I don't recall,  
 12 does that mean you don't remember or does that  
 13 mean it didn't happen?  
 14 MR. MORRIS: Objection to the form  
 15 of the question.  
 16 A. It – it means I don't – I don't  
 17 remember.  
 18 Q. Did Mr. Dondero tell you to have  
 19 those two promissory notes prepared?  
 20 A. I don't recall.  
 21 Q. When you – again, when you say, I  
 22 don't recall today, that means that sitting  
 23 here today, you just don't remember one way or  
 24 the other. Is that accurate?  
 25 A. Yes.

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 2 for – for these amounts attributable to – it  
 3 was either the error – you know, the error,  
 4 and in that conversation he said, go get the  
 5 money from Highland. I believe that is what I  
 6 testified earlier, and that – that is my  
 7 recollection.  
 8 Q. Do you recall if that was an  
 9 in-person meeting or some other mode for the  
 10 meeting?  
 11 A. I – I – I recall that being  
 12 in-person.  
 13 Q. Do you recall if anyone else was  
 14 present, or was it just you and Mr. Dondero?  
 15 A. I recall just he and I.  
 16 Q. And the moneys that he told you to  
 17 find from – or get from Highland, was that in  
 18 the amount of \$5 million and \$2.4 million?  
 19 MR. MORRIS: Objection to the form  
 20 of the question.  
 21 A. I believe so, but I would have to go  
 22 back and look and see when those moneys were  
 23 actually paid into the – into the fund and,  
 24 you know, when those transfers were done. If  
 25 they were all done around that same time, then

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 2 Q. Is it possible that you, having  
 3 heard what Mr. Dondero said and seeing funds  
 4 being transferred, assumed that that would be a  
 5 loan without him actually telling you that  
 6 would be a loan?  
 7 MR. MORRIS: Objection to the form  
 8 of the question.  
 9 A. Sorry, I want to make sure – did I  
 10 ask the amounts that were transferred that I –  
 11 that – that I assumed that that was a loan?  
 12 Q. Well, let me – let me take – let  
 13 me try again.  
 14 So you have established already that  
 15 there were quite a number of promissory notes  
 16 back and forth – I'm sorry, quite a number of  
 17 promissory notes with affiliated companies and  
 18 individuals owing Highland money; right?  
 19 A. Yes.  
 20 Q. And you have established that there  
 21 were many transactions and transfers going back  
 22 and forth over the years; right?  
 23 MS. DANDENEAU: Objection to form.  
 24 A. In – yes, in my capacity as CFO and  
 25 my employment, yes, that is – yes.



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 2 Q. And that's part of the reason why  
 3 you just can't remember some of the details  
 4 today because this – this happened years ago,  
 5 and there were a number of transactions. Is  
 6 that accurate?  
 7 MS. DANDENEAU: Objection to the  
 8 form.  
 9 MR. MORRIS: Objection to the form  
 10 of the question.  
 11 A. I mean, I deal with thousands of –  
 12 of – of – of transactions, you know, whether  
 13 it has – the processing of transactions, you  
 14 know, if it has got, you know, more – more  
 15 zeros, you know, behind it than others.  
 16 When you look at thousands of  
 17 transactions over the years for funds and  
 18 advisors and – and, you know, financial  
 19 statements, I mean, it is – it is very hard  
 20 going back in – in – in my – you know,  
 21 14-ish year career at – at Highland to  
 22 remember a lot of those details, especially  
 23 when I don't have any records or books or  
 24 anything like that, and – and going back many  
 25 years.

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 2 A. If – I don't know if I understand  
 3 your question. Those amounts would arise to my  
 4 level where I would be involved or...  
 5 Q. You would want to know what a  
 6 transfer for that amount, \$7.4 million, was all  
 7 about, as the CFO of Highland, wouldn't you?  
 8 MR. MORRIS: Objection to the form  
 9 of the question.  
 10 A. Yes, I make it – I mean, I – I  
 11 review all sorts of payments, I mean, even  
 12 smaller dollar payments on a periodic basis,  
 13 you know, to – to – to understand and to make  
 14 sure that we are paying things in a – you  
 15 know, in – in – in an informed way. And, you  
 16 know – and we're – and we're paying things  
 17 pursuant to vendor contracts and things like  
 18 that.  
 19 Q. So as part of that, is it possible  
 20 that seeing \$7.4 million go out you would have  
 21 promissory notes made in order to keep a paper  
 22 trail, assuming that those were loans, when  
 23 perhaps they were never intended to be loans by  
 24 Mr. Dondero?  
 25 MR. MORRIS: Objection to the form

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1 WATERHOUSE - 10-19-21  
 2 Q. And that is fine. That – that –  
 3 that is why I asked the question.  
 4 Is it possible in May of 2019 when  
 5 Mr. Dondero told you to transfer the funds from  
 6 Highland, you just assumed on your own that  
 7 those would be loans without him actually  
 8 telling you that those would be loans?  
 9 MR. MORRIS: Objection to the form  
 10 of the question.  
 11 A. I don't know.  
 12 Q. I'm sorry, you –  
 13 A. I said I don't know.  
 14 Q. Okay. Well, as the – as the CFO  
 15 for Highland, if you saw \$7.4 million going  
 16 out, you would feel some responsibility to  
 17 account for that, wouldn't you?  
 18 MR. MORRIS: Objection to the form  
 19 of the question.  
 20 A. Yes.  
 21 Q. Is it fair to say that those would  
 22 be in the range large enough to rise up to your  
 23 level?  
 24 MR. MORRIS: Objection to the form  
 25 of the question.

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1 WATERHOUSE - 10-19-21  
 2 of the question.  
 3 A. I don't know. As I testified  
 4 earlier, I had conversations with Mr. Dondero  
 5 about – about the – the – the moneys that  
 6 were needed for the NAV error. And I recall  
 7 him saying go get it from Highland – or get it  
 8 from Highland.  
 9 Q. Well, why did you sign those  
 10 promissory notes and why didn't you have him  
 11 sign them?  
 12 MR. MORRIS: Objection to the form  
 13 of the question.  
 14 A. I don't know. I don't know.  
 15 Q. You mentioned earlier that you  
 16 typically don't sign promissory notes. Am I  
 17 remembering your testimony correctly?  
 18 I mean, promissory notes on behalf  
 19 of the entities. Not yourself, obviously.  
 20 A. Yes, that is what I said earlier.  
 21 Q. Do you recall any other promissory  
 22 notes in the million-plus range that you had  
 23 ever signed before on behalf of any entity?  
 24 A. There is – there has been a lot of  
 25 transactions over the years. I don't – I

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1 WATERHOUSE - 10-19-21  
 2 don't – I don't recall generally. I don't –  
 3 I don't recall.  
 4 Q. So – but to the best of your  
 5 recollection, it was on your initiative,  
 6 following your discussion with Mr. Dondero,  
 7 that you had someone draft those two promissory  
 8 notes; is that correct?  
 9 MR. MORRIS: Objection to the form  
 10 of the question.  
 11 A. Yes, we would have – the team, as I  
 12 stated earlier, we don't draft promissory  
 13 notes. "The team" meaning the accounting and  
 14 finance team.  
 15 So the team would have worked with  
 16 the legal group at Highland to draft any notes.  
 17 Q. Do you believe or do you have any  
 18 recollection as to whether you would have done  
 19 that pursuant to an email or telephone call or  
 20 in-person meeting?  
 21 MR. MORRIS: Objection to the form  
 22 of the question.  
 23 A. Are you asking if I would have – if  
 24 those notes would have been drafted pursuant to  
 25 an email or phone call?

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1 WATERHOUSE - 10-19-21  
 2 managers of the group. That would have been  
 3 Dave Klos or Kristin Hendrix.  
 4 Dave was the – one of his duties  
 5 was managing the valuation team, and so he was  
 6 intimately involved with this process. So, you  
 7 know...  
 8 Q. Okay.  
 9 A. I don't recall specifically but, I  
 10 mean, my general – you know, I – I – I  
 11 likely would have talked to Dave first about it  
 12 versus someone like Kristin who hadn't been  
 13 intimately involved.  
 14 Q. And – and do you have a view as to  
 15 whether it is most likely that you would have  
 16 done that by email or in-person or how would  
 17 you believe you would have communicated that to  
 18 Mr. Klos?  
 19 MR. MORRIS: Objection to the form  
 20 of the question.  
 21 A. I likely would have done that in  
 22 person. Again, if things of this nature  
 23 that – again, you have to put ourselves back  
 24 to, we have been working on this very stressful  
 25 project for many, many months. And once the

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1 WATERHOUSE - 10-19-21  
 2 Q. Strike that.  
 3 Do you recall whether you sent an  
 4 email to anyone asking them to draft those two  
 5 promissory notes?  
 6 A. I don't recall because, again,  
 7 once – I would have instructed – likely  
 8 instructed the team to – to work with the  
 9 legal group to draft these documents.  
 10 I – I – I – yeah, I didn't – I  
 11 mean, that is more an operational-type  
 12 procedure. So, you know, a manager or a  
 13 controller or working with legal. You know,  
 14 they – they can certainly handle that task to  
 15 get that – you know, to request that from  
 16 legal.  
 17 Q. And who on your team do you think  
 18 you would have asked to do that?  
 19 MR. MORRIS: Objection –  
 20 Q. Who would have been the logical  
 21 person or people, if you don't remember their  
 22 name today?  
 23 MR. MORRIS: Objection to the form  
 24 of the question.  
 25 A. It – it – there is only two

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1 WATERHOUSE - 10-19-21  
 2 go-ahead was to – you know, we see the light  
 3 at the end of the tunnel with wrapping this up  
 4 and making shareholders whole – sorry to say  
 5 "we" – you know, the – so the folks that are  
 6 involved in it.  
 7 I like to talk to people  
 8 face-to-face and – and – and go to – and go  
 9 to their desk, because that shows if I'm going  
 10 to their desk that – that is something that I  
 11 want done, you know.  
 12 Q. And do you remember, Mr. Waterhouse,  
 13 getting those two promissory notes in paper  
 14 format or by email before they were executed?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. I don't recall.  
 18 Q. For whatever was the ordinary course  
 19 back then in May 2019, would you expect to have  
 20 received them only on paper or would you have  
 21 expected to have received them in Word document  
 22 or PDF document by email?  
 23 MR. MORRIS: Objection to the form  
 24 of the question.  
 25 A. I – I didn't sign – I signed very

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1 WATERHOUSE - 10-19-21  
 2 few documents via email. I can't say that it  
 3 never happened, but people either stopped by my  
 4 office and physically walked in documents for  
 5 signature that we discussed face-to-face.  
 6 Or documents were – if – if –  
 7 if – if – let's say I wasn't there or I  
 8 wasn't available, documents were dropped off.  
 9 I had – I had some in- and outboxes in front  
 10 of my – my office there at the Crescent.  
 11 Documents would be dropped off for  
 12 signature. There would be a cover sheet that  
 13 would be – have been applied to those  
 14 documents detailing, you know, who dropped it  
 15 off, the purpose, why, what time.  
 16 And then, you know, as I stated, I  
 17 don't draft documents and I always go to the  
 18 legal group and the compliance group to make  
 19 sure that they're in the loop. And there is  
 20 a – a box or section that says, Has legal  
 21 reviewed or approved, or something to that  
 22 nature.  
 23 Again, I don't – I don't have  
 24 access to that cover sheet anymore, but it  
 25 was – it was something to that effect.

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1 WATERHOUSE - 10-19-21  
 2 Because I'm not in every  
 3 conversation. They're not in every  
 4 conversation – meaning legal compliance – and  
 5 I just want to make sure that – that everyone  
 6 is in sync to, you know, to – to the extent  
 7 possible.  
 8 Q. So if we summarize, you don't  
 9 specifically remember signing these two notes,  
 10 but most likely it would have been that they  
 11 would have presented – been presented to you  
 12 physically on paper?  
 13 MR. MORRIS: Objection to the form  
 14 of the question.  
 15 A. They would – they would have been  
 16 presented physically on paper most likely or  
 17 someone would have left it. But, I mean,  
 18 again, I don't – I don't recall.  
 19 Q. I understand. Understand.  
 20 When you signed – when you signed  
 21 documents, when you personally signed  
 22 documents, did you typically use a ink pen or  
 23 did you use a stamp?  
 24 A. No, I – I – I use a – an – an  
 25 ink pen.

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1 WATERHOUSE - 10-19-21  
 2 And my assistant, you know, if she  
 3 was there, she would review that – you know,  
 4 whatever was being dropped off. And if that  
 5 has legal, you know, reviewed or – reviewed or  
 6 approved it, if that wasn't – if that stuff  
 7 hadn't been done, it was like she would just  
 8 tell them like, go – go – go to the legal  
 9 group, because –  
 10 Q. Let me – let me pause –  
 11 MS. DANDENEAU: Let him finish.  
 12 MR. MORRIS: Thank you. Go ahead.  
 13 A. I take – go to the legal group  
 14 because that – that was my – you know, I  
 15 didn't – I didn't review anything that – that  
 16 they weren't – you know, or there wasn't some  
 17 representation made to me that they had  
 18 reviewed, approved in some capacity.  
 19 Again, my – my – my goal, as CFO,  
 20 is to provide transparency and make sure that  
 21 groups like compliance and other things – and  
 22 the other group in legal are – are in – you  
 23 know, their – they're made aware of  
 24 transactions of – you know, that are crossing  
 25 my desk.

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1 WATERHOUSE - 10-19-21  
 2 Q. Do you know – was there a file at  
 3 Highland kept anywhere with ink-signed  
 4 originals of a promissory notes in general or  
 5 these two promissory notes specifically?  
 6 MR. MORRIS: Objection to the form  
 7 of the question.  
 8 A. Sorry, I just want to make sure I  
 9 understand your question. Are you saying is  
 10 there a file somewhere that has ink-signed  
 11 originals of these two promissory notes?  
 12 Q. Yes.  
 13 A. I would – I would assume they're  
 14 some place. I mean –  
 15 Q. Well, was there a – was there a  
 16 place where Highland generally kept originals  
 17 of promissory notes owed to it?  
 18 A. I wouldn't – no.  
 19 MR. RUKAVINA: Mr. Nguyen, would you  
 20 please pull up my A7, alpha 7.  
 21 Q. These are the two promissory notes,  
 22 Mr. Waterhouse.  
 23 (Exhibit A7 marked.)  
 24 Q. And please – Mr. Waterhouse, please  
 25 command my associate to scroll down as you need

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1 WATERHOUSE - 10-19-21  
 2 to, but I want you to take a very close look at  
 3 your two signatures here and tell me whether  
 4 you believe, in fact, that you ink signed them  
 5 or whether you –  
 6 MS. DANDENEAU: Mr. Rukavina,  
 7 Mr. Waterhouse has the copies.  
 8 MR. RUKAVINA: Perfect. Then you  
 9 can take this down, Mr. Nguyen.  
 10 A. These – these – these signatures  
 11 are identical, now that I stare at them, and I  
 12 mean, they are so close – I mean, they're  
 13 identical that, I mean, even with my chicken  
 14 scratch signature, I don't know if I can – you  
 15 know, I do this 100 times, could I do that  
 16 as – as precisely as I see between the two  
 17 notes.  
 18 Q. Well, that is why I ask.  
 19 Mr. Waterhouse, now that you have examined  
 20 them, does it seem like it is more likely that  
 21 you actually electronically signed these?  
 22 MR. MORRIS: Objection to the form  
 23 of the question.  
 24 A. Is – I don't – I don't recall  
 25 specifically. As I said before, my assistant

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1 WATERHOUSE - 10-19-21  
 2 you know, I don't have any of these records is  
 3 what I'm saying. I don't have any of those  
 4 records.  
 5 Q. That is why I'm asking you these  
 6 questions in great detail because I don't have  
 7 those emails. I'm trying to – I'm hoping that  
 8 you will give me some names or some details so  
 9 I can go look for more emails, but again, you  
 10 don't remember any – any individual, other  
 11 than Mr. Dondero that we've discussed, you  
 12 don't remember any individual with whom you  
 13 discussed these promissory notes prior to their  
 14 execution?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. I don't recall discussing it with  
 18 anybody else.  
 19 Q. Okay.  
 20 A. I mean, prior –  
 21 Q. I understand.  
 22 A. You know, there was no one else –  
 23 there was no one else in that meeting that I  
 24 recall with Mr. Dondero.  
 25 Q. Now, when you established that by

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1 WATERHOUSE - 10-19-21  
 2 did have a – an electronic signature, and that  
 3 was used from time to time. It wasn't as  
 4 common practice back in 2019. It definitely  
 5 was more common practice when we had to work  
 6 from home and remotely for COVID because it  
 7 that made it almost impossible to, right,  
 8 provide wet signatures since we're all working  
 9 from home remotely.  
 10 Q. Well, going just for these two  
 11 promissory notes, Mr. Waterhouse, in light of  
 12 your inability to remember any details, are you  
 13 sure you actually signed either or both of  
 14 those notes?  
 15 MS. DANDENEAU: Objection to form.  
 16 A. I don't recall specifically  
 17 signing – actually physically signing these  
 18 notes. As I said before, I don't recall doing  
 19 that. This – this looks like my signature,  
 20 but yet these two signatures are identical.  
 21 Q. So you don't recall physically  
 22 signing them, and I take it you don't recall  
 23 electronically signing them either?  
 24 A. I don't recall. You know, Highland  
 25 has all my emails. If that occurred, you know,

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1 WATERHOUSE - 10-19-21  
 2 May of 2019 –  
 3 A. And – and from what I recall, and  
 4 the reason why I was by myself is – is, you  
 5 know, I don't – I don't want to speculate, I'm  
 6 sorry.  
 7 Q. Okay. We have established that by  
 8 May of 2019, in your view, the liabilities of  
 9 HCMFA exceeded its assets; correct?  
 10 A. Yeah. I mean, again, I don't have  
 11 financial statements in front of me, but I  
 12 think, if I recall, we'd have to go through the  
 13 testimony with Mr. Morris, I believe that was  
 14 the case.  
 15 Q. In fact, you will recall that in  
 16 April of 2019, Mr. Dondero signed a document  
 17 that extended the demand feature of two prior  
 18 notes to May 31, 2019. Do you recall that?  
 19 MS. DEITSCH-PEREZ: I think you  
 20 might – maybe have the court reporter read  
 21 that back. You might have misspoke.  
 22 (Record read.)  
 23 MR. RUKAVINA: And I did misspeak.  
 24 Q. I meant to say to May 31, 2021. Do  
 25 you recall that, sir?

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1 WATERHOUSE - 10-19-21  
 2 MR. MORRIS: Objection to the form  
 3 of the question.  
 4 A. Yes.  
 5 MR. RUKAVINA: And, Mr. Nguyen, just  
 6 so that the record is clear, will you please  
 7 pull up my Exhibit Alpha 10, A10.  
 8 (Exhibit A10 marked.)  
 9 Q. You don't have this one in front of  
 10 you, Mr. Waterhouse? This is the one that  
 11 Mr. Morris used earlier. Do you see that  
 12 document, sir?  
 13 A. Yes, I do.  
 14 Q. And this is what you were testifying  
 15 about before when Mr. Morris was asking you.  
 16 Do you remember that?  
 17 A. Yes.  
 18 Q. So here is my question for you,  
 19 Mr. Waterhouse: As the chief financial officer  
 20 of Highland, was it prudent for Highland less  
 21 than three weeks later to be lending  
 22 \$7.2 million to an insolvent entity that  
 23 couldn't even then pay its debts back to  
 24 Highland?  
 25 MS. DANDENEAU: Objection to form.

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1 WATERHOUSE - 10-19-21  
 2 Q. Did you even –  
 3 MR. MORRIS: I didn't hear that  
 4 question, sir.  
 5 MR. RUKAVINA: The one that he  
 6 answered, John, or my new one?  
 7 MR. MORRIS: No, no, your question,  
 8 Davor.  
 9 MR. RUKAVINA: I had asked him  
 10 whether he received any of the  
 11 \$7.4 million. He said no.  
 12 MR. MORRIS: Yeah. I thought there  
 13 was a question after that. Maybe I was  
 14 mistaken. I apologize.  
 15 MR. RUKAVINA: I had started a new  
 16 question, so here, let me start the new  
 17 question again.  
 18 Q. Did you personally receive any  
 19 direct benefit from those two notes for  
 20 \$7.4 million?  
 21 A. No.  
 22 Q. Did you ever personally consider  
 23 yourself obligated to repay either or both of  
 24 those notes?  
 25 A. No.

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1 WATERHOUSE - 10-19-21  
 2 MR. MORRIS: Objection to the form  
 3 of the question.  
 4 A. Sorry, I just want to make sure –  
 5 are you asking me, did you say, was it prudent  
 6 for Highland to loan \$7.4 million to HCMFA a  
 7 few weeks after this document was executed?  
 8 Q. Yes, and at a time when HCMFA's  
 9 liabilities exceeded its assets.  
 10 MR. MORRIS: Objection to the form  
 11 of the question.  
 12 A. I don't – it is odd. I don't know.  
 13 MR. RUKAVINA: You can take this  
 14 exhibit down, Mr. Nguyen.  
 15 Q. Do you recall asking anyone,  
 16 Mr. Dondero or – or anyone outside as to  
 17 whether Highland ought to be lending  
 18 \$7.4 million to HCMF regarding HCMF's  
 19 creditworthiness?  
 20 MR. MORRIS: Objection to the form  
 21 of the question.  
 22 A. I don't recall.  
 23 Q. Did you receive personally any of  
 24 that \$7.4 million?  
 25 A. No.

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1 WATERHOUSE - 10-19-21  
 2 MR. RUKAVINA: Pull up those notes  
 3 again, Mr. Nguyen.  
 4 Q. You can have them in front of you,  
 5 Exhibit 7, Mr. Waterhouse, whatever is easier  
 6 for you. If you go to your signature page, my  
 7 question to you is, why did you not include  
 8 your title as treasurer by your name, Frank  
 9 Waterhouse?  
 10 MS. DANDENEAU: Objection to form.  
 11 A. I didn't – I didn't draft this  
 12 document.  
 13 Q. So you relied on whoever drafted it  
 14 to draft it correctly?  
 15 A. Yes.  
 16 Q. Okay. But back then when you signed  
 17 this, did it ever cross your mind that you were  
 18 the maker on these notes?  
 19 A. No.  
 20 Q. Back then when you signed this  
 21 document, did it ever cross your mind that you  
 22 could be a co-obligor on these notes?  
 23 A. No. I didn't receive \$7.4 million,  
 24 I mean...  
 25 Q. But can you say that HCMFA received

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1 WATERHOUSE - 10-19-21  
 2 \$7.4 million?  
 3 A. I would have to go back and look and  
 4 check in, you know, the – the financial  
 5 records and the bank statements.  
 6 MR. RUKAVINA: You can take this  
 7 exhibit down, Mr. Nguyen.  
 8 Q. Mr. Waterhouse, I'm not trying to be  
 9 a smart-ass, but if the law says that because  
 10 of the way that you signed this promissory  
 11 note, if that is what the law says, that that  
 12 made you personally – personally liable, then  
 13 you would agree with me that that was never  
 14 your intent?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. That was never – I wouldn't sign a  
 18 note and not get consideration in return.  
 19 Q. So putting all other issues aside,  
 20 if the law – if the law says that you were  
 21 liable for those notes because of how you  
 22 signed them, then would you agree with me that  
 23 these notes are a mistake?  
 24 MR. MORRIS: Objection to the form  
 25 of the question.

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1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. Okay. And do you see an entry for  
 4 Highland Capital Management Fund Advisors?  
 5 MR. MORRIS: I'm sorry, hold on.  
 6 Where are you looking?  
 7 MR. RUKAVINA: Last page, John.  
 8 MR. MORRIS: Is it the page on the  
 9 screen?  
 10 MR. RUKAVINA: Oh, I'm sorry.  
 11 Mr. Nguyen just did it. Yes, the last page  
 12 there.  
 13 MR. MORRIS: Thank you.  
 14 Q. Do you see an entry there for HCMFA?  
 15 A. Yes.  
 16 Q. About \$10.5 million.  
 17 Do you see that?  
 18 A. I do.  
 19 Q. And, now, do you have any  
 20 explanation for why if HCMFA owed \$7.4 million,  
 21 plus the 5.3 million that had been extended,  
 22 why that amount was only 10.5 million?  
 23 A. I don't know. Okay.  
 24 MR. RUKAVINA: Close this one and  
 25 pull up, Mr. Nguyen, the schedules,

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1 WATERHOUSE - 10-19-21  
 2 MS. DANDENEAU: Objection to the  
 3 form.  
 4 A. Yes.  
 5 Q. So do you agree with me that it's  
 6 odd – I think that is the word you used –  
 7 that Highland would be loaning \$7.4 million a  
 8 few weeks after that extension to an entity  
 9 whose liabilities exceeded its assets, and you  
 10 would agree with me that it was never your  
 11 intention to be in any way liable for these two  
 12 promissory notes; correct?  
 13 MR. MORRIS: Objection to the form  
 14 of the question.  
 15 A. Sorry, you – you asked a lot there.  
 16 MR. RUKAVINA: I will strike it and  
 17 I will move on.  
 18 Let's go to – pull up Exhibit 9,  
 19 please Mr. Nguyen – Alpha 9, I'm sorry, Alpha  
 20 9, A9.  
 21 (Exhibit A9 marked.)  
 22 Q. Sir, take a moment to look at this,  
 23 but this is an email, and you will see attached  
 24 July 31, 2020 affiliate notes.  
 25 Do you see that attachment?

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1 WATERHOUSE - 10-19-21  
 2 schedule of assets. What exhibit is this  
 3 of ours, Mr. Nguyen?  
 4 MR. NGUYEN: This is A11.  
 5 MR. RUKAVINA: Oh, this will be A11.  
 6 (Exhibit A11 marked.)  
 7 Q. You don't have this in front of you,  
 8 Mr. Waterhouse?  
 9 A. Okay.  
 10 Q. This is what Mr. Morris used  
 11 earlier. Do you remember looking at this with  
 12 Mr. Morris?  
 13 A. Yes.  
 14 MR. RUKAVINA: You might have to  
 15 zoom in a little. Okay.  
 16 Q. Now, I see Affiliate Note A, B, and  
 17 C.  
 18 Do you have any recollection as to  
 19 why the names of the affiliates are omitted?  
 20 A. I don't. I testified earlier that,  
 21 you know, the team worked with DSI in providing  
 22 these. I – I don't – I don't know.  
 23 Q. Can we deduce – is it logical to  
 24 deduce that Affiliate Note A would be NexPoint  
 25 given its size of \$24.5 million?

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1 WATERHOUSE - 10-19-21  
 2 MR. MORRIS: Objection to the form  
 3 of the question.  
 4 A. I mean, it – it is a – it is – it  
 5 is approximate.  
 6 Q. Well, can we – can we deduce – or,  
 7 I'm sorry, strike that.  
 8 Can you, sitting here today,  
 9 logically conclude that Affiliate Note B or C  
 10 represents HCMFA?  
 11 MR. MORRIS: Objection to the form  
 12 of the question.  
 13 A. I don't know. I don't know. I  
 14 can't.  
 15 Q. Okay. As of the petition date, we  
 16 have established that HCMFA, under promissory  
 17 notes, owed \$7.4 million and \$5.3 million to  
 18 the debtor; correct?  
 19 MR. MORRIS: Objection to the form  
 20 of the question.  
 21 A. Yes.  
 22 Q. Okay. And by my reckoning, that  
 23 would be somewhere approaching \$13 million.  
 24 MR. MORRIS: Objection to the form  
 25 of the question.

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1 WATERHOUSE - 10-19-21  
 2 affiliates for Affiliate Note A, B, and C would  
 3 have been listed there?  
 4 A. Are you asking we provided the names  
 5 to the financial advisor? I don't – I don't  
 6 understand who the financial advisor is.  
 7 Q. I'm sorry, DSI.  
 8 Let me ask the question this way,  
 9 Mr. Waterhouse.  
 10 Whenever you provided information  
 11 about the affiliate notes to DSI, do you  
 12 believe that you would have included the actual  
 13 names of the affiliates, you or your team, or  
 14 that you would have done the Affiliate Note A,  
 15 Note B, Note C?  
 16 MR. MORRIS: Objection to the form  
 17 of the question.  
 18 MS. DANDENEAU: Objection to the  
 19 form.  
 20 A. We – like I testified earlier, when  
 21 we were – we gave everything to – to DSI. We  
 22 were giving all of our records, all of our  
 23 files, everything to DSI. We weren't redacting  
 24 information or saying, hey, here is a note,  
 25 here is Affiliate Note A or B.

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1 WATERHOUSE - 10-19-21  
 2 Q. It would be \$12.7 million. Is that  
 3 generally correct?  
 4 A. Sorry, the amounts were 7.4, 5.3.  
 5 Q. Yes.  
 6 A. Okay. Yeah, that – that – I can  
 7 do that math, yes.  
 8 Q. Do you have any explanation or any  
 9 understanding of why there is no similar entry  
 10 listed here on the schedule of assets filed  
 11 with the bankruptcy court?  
 12 MR. MORRIS: Objection to the form  
 13 of the question.  
 14 A. I don't know. We have to look at  
 15 the supporting schedules, like I talked about  
 16 other – presumably there is – there is a  
 17 build to the schedule that would provide the  
 18 detail.  
 19 Q. Well, that was going to be my next  
 20 question. You anticipated it.  
 21 MR. RUKAVINA: You can – you can  
 22 take this down, Mr. Nguyen.  
 23 Q. Do you believe that whenever you and  
 24 your team provided the underlying data to the  
 25 financial advisor that the actual names of the

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 2 I mean, it was – our job and our  
 3 focus – and I testified in court back in 2019;  
 4 right – was – was to be transparent and, you  
 5 know, get DSI up to speed on – on the matters  
 6 at Highland. So I can't see us redacting at  
 7 that point.  
 8 MR. RUKAVINA: Mr. Nguyen, will you  
 9 please pull up Mr. Morris' Exhibit 36.  
 10 Just the very first page, the very top  
 11 email. You might zoom in a little bit.  
 12 Q. Now, you recall being asked about  
 13 this by Mr. Morris?  
 14 A. Yes, I do.  
 15 Q. And you wrote: The HCMFA note is a  
 16 demand note.  
 17 You wrote that; right?  
 18 A. Yes.  
 19 Q. And, in fact, weren't there by that  
 20 point in time several notes?  
 21 A. Yes, there were. Again, I don't –  
 22 I don't remember everything specifically. I  
 23 mean –  
 24 Q. I understand. I understand.  
 25 So this is an example where – where

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1 WATERHOUSE - 10-19-21  
 2 you might have made a mistake by referring to a  
 3 singular instead of a plural; right?  
 4 A. Yes.  
 5 Q. Okay. And you – you wrote – a  
 6 couple of sentences later, you wrote: There  
 7 was an agreement between HCMLP and HCMFA the  
 8 earliest they could demand is May 2021.  
 9 You wrote that; right?  
 10 A. Yes.  
 11 Q. But I think you – you agreed with  
 12 Mr. Morris that that can't possibly apply to  
 13 the May 2019 notes, can it?  
 14 MR. MORRIS: Objection to the form  
 15 of the question. That is not what he  
 16 testified to.  
 17 Q. Let me ask – let me ask a different  
 18 question.  
 19 Sitting here today – or if you can  
 20 answer me from your memory on October 6,  
 21 2020 – did the April acknowledgment that  
 22 extended the maturity date apply to the  
 23 May 2019 notes also?  
 24 A. I don't recall specifically.  
 25 Q. Well, you recall that the notes that

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1 WATERHOUSE - 10-19-21  
 2 putting language in those May notes. I don't  
 3 remember what language you are referring to.  
 4 Q. Well, let's read this again.  
 5 There was an agreement between HCMLP  
 6 and HCMFA the earliest they could demand is May  
 7 2021.  
 8 Do you recall that agreement?  
 9 A. Yes, that was the agreement we  
 10 looked at earlier; correct?  
 11 Q. Okay. Yes.  
 12 Do you – do you understand now that  
 13 that agreement that we looked at earlier also  
 14 applied to the May 2019 notes that you signed?  
 15 A. I don't – I don't know.  
 16 Q. But as of October 6, 2020, you're  
 17 writing that there is one demand note and  
 18 you're categorizing that demand note as not  
 19 being demandable on May 2021; correct?  
 20 A. Yes.  
 21 Q. And you know now that you made at  
 22 least one mistake in this email; correct?  
 23 MR. MORRIS: Objection to the form  
 24 of the question.  
 25 A. Yes.

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1 WATERHOUSE - 10-19-21  
 2 you signed were demand notes; right?  
 3 A. Yes.  
 4 Q. Do you find it logical, based on  
 5 your experience, that had they intended to have  
 6 a different or a set maturity date, you would  
 7 have instructed that that set maturity date be  
 8 included instead of a demand feature?  
 9 MR. MORRIS: Objection to the form  
 10 of the question.  
 11 A. Sorry, just want to make sure I  
 12 understand. You are saying that – that the  
 13 \$5 million note, the \$2.4 million note, if  
 14 those were supposed to be a term note, that I  
 15 would have made sure that those were a term  
 16 note?  
 17 Q. I'm saying – I'm saying,  
 18 Mr. Waterhouse, that on May the 2nd and May the  
 19 3rd, 2019, if you intended that those two  
 20 promissory notes could not be called until May  
 21 2021, would you have included such language in  
 22 those two promissory notes?  
 23 MR. MORRIS: Objection to the form  
 24 of the question.  
 25 A. I guess – I'm sorry, I don't recall

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1 WATERHOUSE - 10-19-21  
 2 MR. RUKAVINA: You can pull this  
 3 down, Mr. Nguyen.  
 4 Q. So, Mr. Waterhouse, you don't  
 5 remember Mr. Dondero telling you to make these  
 6 loans or not. HCMLP was loaning \$7.4 million  
 7 to someone that their assets were less than  
 8 their liabilities.  
 9 We don't see on the July list of  
 10 notes, where there is \$12.7 million of notes,  
 11 we don't see that on the bankruptcy schedules,  
 12 and we have this Exhibit 36 where you are  
 13 confused.  
 14 Are you prepared to tell me, sir,  
 15 today that you might have made a mistake in  
 16 executing those two promissory notes?  
 17 MR. MORRIS: Objection to the form  
 18 of the question.  
 19 A. I – I don't know.  
 20 Q. And if it turns out that you're  
 21 personally liable for those promissory notes,  
 22 it would certainly be a mistake, wouldn't it?  
 23 MS. DANDENEAU: Objection to the  
 24 form.  
 25 MR. MORRIS: Join.



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1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. If Mr. Dondero testifies that he  
 4 never told you to make these loans, would you  
 5 disagree with his testimony?  
 6 MR. MORRIS: Objection to the form  
 7 of the question.  
 8 A. Like I testified earlier with my  
 9 conversation with Mr. Dondero, all I recall is  
 10 he said, get the money from Highland.  
 11 Q. And if Mr. Dondero testifies that  
 12 he, in consultation with other senior personnel  
 13 at Highland, decided that Highland needed to  
 14 pay HCMFA \$7.4 million as compensation for the  
 15 NAV error and not a loan, would you have any  
 16 reason to disagree with Mr. Dondero?  
 17 MR. MORRIS: Objection to the form  
 18 of the question.  
 19 A. If that was – if that was his  
 20 intent, yes, it would – I would –  
 21 Q. Do you have any reason to disagree  
 22 with him?  
 23 MR. MORRIS: Objection to the form  
 24 of the question.  
 25 A. If that was his intent, I don't

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1 WATERHOUSE - 10-19-21  
 2 Q. Again, the only thing you remember,  
 3 sitting here today, was Mr. Dondero said, get  
 4 the money from Highland, and that is it, that  
 5 is all you remember?  
 6 MR. MORRIS: Objection to the form  
 7 of the question.  
 8 A. I testified to that several times.  
 9 This was over two years ago. A lot has  
 10 happened. That is all I recall.  
 11 Q. And help me here. I'm not very  
 12 technologically astute. When you – and I – I  
 13 recognize that you do it rarely, but when you  
 14 sign a document electronically, do you believe  
 15 that there is an electronic record of you  
 16 having authorized or signed a document  
 17 electronically?  
 18 MR. MORRIS: Objection to the form  
 19 of the question.  
 20 A. I – I don't know the tech answer to  
 21 that, but, you know, since I don't have – I  
 22 don't ever attach my signature block  
 23 electronically, my assistant would have done  
 24 that, and if that is done over email like we  
 25 did several times – you know, multiple,

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1 WATERHOUSE - 10-19-21  
 2 know. I don't know how I disagree with that.  
 3 Q. And just to confirm, you don't  
 4 remember ever asking Mr. Dondero whether you  
 5 should have two promissory notes prepared?  
 6 A. No.  
 7 Q. And you don't remember discussing  
 8 with Mr. Dondero what the terms of those two  
 9 promissory notes should be?  
 10 A. I don't recall – I testified all I  
 11 recall is he said, get the money from Highland.  
 12 I don't – the – the terms of the note, I  
 13 don't recall ever having a discussion around  
 14 the terms of the note, but since I don't draft  
 15 the notes, that – there could have been a  
 16 conversation with other people later.  
 17 Q. Do you have any memory of whether  
 18 after the notes were drafted, but before you  
 19 signed them, that you communicated with  
 20 Mr. Dondero in any way to just confirm or – or  
 21 get his blessing or ratification to signing  
 22 those notes?  
 23 MR. MORRIS: Objection to the form  
 24 of the question.  
 25 A. I don't recall.

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1 WATERHOUSE - 10-19-21  
 2 multiple times over COVID, she would attach my  
 3 signature block and then email it out to  
 4 whatever party.  
 5 Q. What was your assistant's name in  
 6 May 2019?  
 7 A. It was Naomi Chisum.  
 8 Q. Is she the only one? I'm sorry, was  
 9 she your only assistant that would have maybe  
 10 facilitated logistically something like you  
 11 just described?  
 12 A. You know, she was out on maternity  
 13 leave at some point. I don't – I don't recall  
 14 those dates where she was out for maternity  
 15 leave. There was – there were folks backing  
 16 her up. I don't recall specifically who  
 17 those – who those, you know, administrative  
 18 assistants were, and I don't recall  
 19 specifically if she was out during this time on  
 20 maternity leave.  
 21 I do know that that she was out for  
 22 a period of time, or who knows, or she could  
 23 have been on vacation that day or, you know, I  
 24 don't know.  
 25 Q. Switching gears now, the two

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1 WATERHOUSE - 10-19-21  
 2 complaints that have been filed that is against  
 3 HCMFA and NexPoint, did you see any drafts of  
 4 those complaints before they were filed?  
 5 MR. MORRIS: Objection to the form  
 6 of the question, and to the extent that you  
 7 had any communications with counsel or you  
 8 were shown drafts of the complaints by  
 9 counsel while you were employed by  
 10 Highland, I direct you not to answer.  
 11 A. I – I reviewed documents yesterday  
 12 with counsel here. I believe that is the first  
 13 time I have ever seen those.  
 14 Q. Okay. Did you ever discuss with  
 15 Mr. Seery these two lawsuits before or after  
 16 they were filed?  
 17 A. I don't recall.  
 18 Q. Were you ever interviewed by legal  
 19 counsel, to your knowledge, about these  
 20 promissory notes before the complaints were  
 21 filed? Without going into what was said, were  
 22 you ever interviewed by legal counsel?  
 23 MR. MORRIS: Objection to the form  
 24 of the question.  
 25 A. I don't recall.

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1 WATERHOUSE - 10-19-21  
 2 A. The Zoom calls we had, I don't  
 3 recall having seen video or, you know, or if it  
 4 was on Zoom, I just remember it being – well,  
 5 no, you know what, there were some – you know,  
 6 I take that back.  
 7 So there were – there were some  
 8 times that I did remember seeing Mr. Seery  
 9 on – on some of the Zoom calls.  
 10 Q. Well, let me –  
 11 A. I don't – sorry, I'm thinking. I'm  
 12 thinking – I'm going back. I'm trying to  
 13 process this.  
 14 Q. I can make it much quicker,  
 15 Mr. Waterhouse. I have heard – I have heard  
 16 that Mr. Seery is a copious note taker.  
 17 Do you have any knowledge about  
 18 that?  
 19 A. No.  
 20 Q. Okay. Switching gears yet again,  
 21 and this will be last theme. Do you need a  
 22 restroom break, or are you good to go for  
 23 another half an hour?  
 24 MS. DEITSCH-PEREZ: I need a  
 25 restroom break.

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1 WATERHOUSE - 10-19-21  
 2 Q. Obviously with COVID, it changed,  
 3 but – but before COVID, did you used to meet  
 4 with Mr. Seery from time to time in-person?  
 5 A. Yeah, I mean, so before COVID – so  
 6 we're talking kind of late March, early April,  
 7 right, there was about – I don't remember the  
 8 specific date when the board for Highland was  
 9 appointed. I believe it was around February of  
 10 2020, so maybe there was a month-and-a-half,  
 11 two-month window where we were meeting  
 12 in-person or, you know, like we were actually  
 13 in the office, excuse me, we were in the  
 14 office.  
 15 And, you know, when they were first  
 16 appointed, the board members and Mr. Seery  
 17 were – were definitely down here more  
 18 in-person.  
 19 Q. Did you ever see Mr. Seery taking  
 20 written notes of – of his meetings with you or  
 21 others?  
 22 A. I don't recall.  
 23 Q. Do you recall on any Zoom or video  
 24 conference with Mr. Seery, seeing him take  
 25 notes, written notes?

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1 WATERHOUSE - 10-19-21  
 2 MR. RUKAVINA: Can we make it five  
 3 minutes?  
 4 THE WITNESS: Five minutes would be  
 5 great.  
 6 VIDEOGRAPHER: We're going off the  
 7 record at 5:53 p.m.  
 8 (Recess taken 5:53 p.m. to 5:59 p.m.)  
 9 VIDEOGRAPHER: We are back on the  
 10 record at 5:59 p.m.  
 11 Q. Mr. Waterhouse, I had asked you  
 12 earlier about contracts between HCMFA and the  
 13 debtor, and now I'm going to talk about  
 14 contracts between the debtor and NexPoint  
 15 Advisors. Okay?  
 16 A. Okay.  
 17 Q. Now, were there contracts similar to  
 18 the ones with HCMFA that NexPoint had in the  
 19 nature of employee reimbursement and shared  
 20 services?  
 21 A. Yes, they – NexPoint Advisors and  
 22 Highland Capital Management Fund Advisors had  
 23 cost reimbursement and shared services  
 24 agreements with Highland Capital Management,  
 25 L.P.

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1 WATERHOUSE - 10-19-21  
 2 Q. And was that shared services  
 3 agreement, to the best of your understanding,  
 4 in place as of December 31, 2020?  
 5 A. It was – it was terminated at some  
 6 point, and I remember the contracts had  
 7 different termination dates, but I think the –  
 8 the date of termination was January 31st of  
 9 2021, after the termination was put in.  
 10 So yeah, it would be in place at the  
 11 end of the year of December – it would be in  
 12 place at December 31st, 2020.  
 13 Q. And pursuant to that agreement as of  
 14 December 31st, 2020, was the debtor providing  
 15 what you would describe as back office services  
 16 to NexPoint?  
 17 A. Yes.  
 18 Q. Would those have included accounting  
 19 services?  
 20 A. Yes.  
 21 Q. And as part of those accounting  
 22 services, would the debtor have assisted  
 23 NexPoint with paying its bills?  
 24 MR. MORRIS: Objection to the form  
 25 of the question.

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1 WATERHOUSE - 10-19-21  
 2 Q. You answered yes?  
 3 A. Yes.  
 4 Q. And the payments, though, whose  
 5 funds would they be made from?  
 6 A. From the bank account of NexPoint  
 7 Advisors. If they were NexPoint advisor  
 8 obligations, it would be made from NexPoint  
 9 Advisors' bank account.  
 10 Q. So let's pull up Exhibit Alpha 1.  
 11 You should have that – it is my Tab 1 or my  
 12 Exhibit 1.  
 13 (Exhibit A1 marked.)  
 14 Q. So this is a – this is a series of  
 15 emails, Mr. Waterhouse. Let's look at the  
 16 first page here, November 25, 2020, between  
 17 Kristin Hendrix and yourself.  
 18 Do you see that, sir?  
 19 A. I do.  
 20 Q. And do you see where Ms. Hendrix  
 21 writes: NPA.  
 22 Do you know what NPA stood for?  
 23 A. Yes.  
 24 Q. And what does it stand for?  
 25 A. NexPoint Advisors.

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1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. So let's break that up. You were a  
 4 treasurer of NexPoint as well in December of  
 5 2020?  
 6 MR. MORRIS: Objection to the form  
 7 of the question.  
 8 A. Yes.  
 9 Q. Okay. And in December of 2020, did  
 10 NexPoint have its own bank accounts?  
 11 A. Yes.  
 12 Q. And did it use those bank accounts  
 13 to pay various of its obligations?  
 14 A. Yes.  
 15 Q. Did employees of the debtor have the  
 16 ability to cause transfers to be made from  
 17 those bank accounts on behalf of NexPoint?  
 18 A. Yes.  
 19 Q. And is that one of services that the  
 20 debtor provided NexPoint, basically ensuring  
 21 that accounts payable and other obligations  
 22 would be paid?  
 23 A. Yes.  
 24 MR. MORRIS: Objection to the form  
 25 of the question.

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1 WATERHOUSE - 10-19-21  
 2 Q. And was that how you-all internally  
 3 at Highland refer to NexPoint Advisors, L.P.?  
 4 A. I mean, yes, amongst other things.  
 5 Q. And she writes at the bottom of her  
 6 email: Okay to release?  
 7 Do you see that?  
 8 A. Yes, I do.  
 9 Q. So what –  
 10 MR. MORRIS: Hold on one second.  
 11 Okay. Go ahead.  
 12 MR. RUKAVINA: Yeah.  
 13 Q. So what is – what is Ms. Hendrix  
 14 here on November 25 asking of you?  
 15 A. She is asking me – so she – these  
 16 are – these are payments – typically we would  
 17 do an accounts payable run every week at the  
 18 end of every Friday. But looking at this date,  
 19 it is Wednesday, November 25th, which means, to  
 20 me, it is likely Thanksgiving weekend.  
 21 So this is the day before  
 22 Thanksgiving, so this is the last kind of –  
 23 kind of day before the holidays and vacation  
 24 and things of that nature. So it is  
 25 effectively the Friday of that week.

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1 WATERHOUSE - 10-19-21  
 2 So she is – she is putting in all  
 3 the payments for the week because we batch  
 4 payments weekly. And these are the payments  
 5 that go out that week, and she is informing me  
 6 of the payments and – you know, again, at the  
 7 bottom of the email, she is asking for my okay  
 8 to – to release these payments in the wire  
 9 system.  
 10 Q. So these would be accounts payable  
 11 of NexPoint?  
 12 A. I mean, it would be accounts payable  
 13 for all of these entities listed on this email.  
 14 Q. And who was Ms. Hendrix employed by  
 15 in November and December of 2020?  
 16 A. Highland Capital Management.  
 17 Q. Okay. So – so part of the services  
 18 that NexPoint had contracted with was for  
 19 Highland to ensure that NexPoint timely paid  
 20 its accounts payable; is that accurate?  
 21 MR. MORRIS: Objection to the form  
 22 of the question. You have got to be  
 23 kidding me.  
 24 Q. Is that accurate?  
 25 A. Yes.

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1 WATERHOUSE - 10-19-21  
 2 looking at – I'm – I'm looking at the date of  
 3 this email. It is November 30th. It is the  
 4 last day of the month.  
 5 HCMFA has obligations it needs to  
 6 pay to its broker-dealer, which is HCFD. And  
 7 it likely was short funds to make those  
 8 obligations under that – under its agreement,  
 9 and so it provided a one-day loan because on  
 10 the next business day on 12/1 – or the next  
 11 business day in December, it would receive  
 12 management fees from the underlying funds that  
 13 it managed and it would be able to pay back  
 14 that loan to NexPoint Advisors.  
 15 Q. So – so here Ms. Hendrix was  
 16 seeking your approval to transfer \$325,000 from  
 17 NexPoint to HCMFA for a one-day loan; is that  
 18 correct?  
 19 A. That is correct.  
 20 Q. Let's flip to the next page, sir.  
 21 MR. RUKAVINA: And, Mr. Nguyen, if  
 22 you will please scroll down.  
 23 Q. Now we have as an entry for  
 24 \$325,000, 11/30 loan payment.  
 25 Do you see that, sir?

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1 WATERHOUSE - 10-19-21  
 2 Q. And did NexPoint rely on employees  
 3 of the debtor to ensure that NexPoint's  
 4 accounts payable were timely paid?  
 5 MR. MORRIS: Objection to the form  
 6 of the question.  
 7 A. Yes.  
 8 MR. RUKAVINA: Let's flip to the  
 9 next page, Mr. Nguyen, if you will please  
 10 scroll to the next page.  
 11 Q. So this is an email similar to the  
 12 prior one, November 30th.  
 13 Do you see where it says, NPA HCMFA,  
 14 USD \$325,000 one-day loan?  
 15 Do you see that, sir?  
 16 A. I do.  
 17 Q. Do you have any memory of what that  
 18 was?  
 19 A. I don't recall what that – what  
 20 that payment was for.  
 21 Q. Did it sometimes occur that one  
 22 advisor would, on very short-terms, make loans  
 23 to another advisor?  
 24 A. Yes. This – this – this occurred  
 25 from – from – from time to time. It actually

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1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. And that is probably the loan that  
 4 was approved on the prior page?  
 5 A. Yes, most likely.  
 6 Q. So is it also true, sir, that in  
 7 addition to accounts payable debtor employees  
 8 would be assisting NexPoint with respect to  
 9 paying back its debt?  
 10 MR. MORRIS: Objection to the form  
 11 of the question.  
 12 A. I mean, yes, for loans of this  
 13 nature, yes.  
 14 Q. Well, what about long term loans?  
 15 Was it reasonable for NexPoint to expect debtor  
 16 employees to ensure that NexPoint timely paid  
 17 its obligations under long-term notes?  
 18 MR. MORRIS: Objection to the form  
 19 of the question.  
 20 MS. DANDENEAU: Objection to form.  
 21 A. I mean, that is one of the things  
 22 that the Highland personnel did provide to the  
 23 advisors. Yes, we would – we would – over  
 24 the years, yes, we – we – we – we did do  
 25 that generally. Again, I don't remember

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1 WATERHOUSE - 10-19-21  
 2 specifically but, yes, generally we – you  
 3 know, we did do that.  
 4 Q. So do you recall – and we can pull  
 5 it up, if need be – that under the NexPoint  
 6 note that Mr. Morris asked you about earlier,  
 7 the one for more than \$30 million, that  
 8 NexPoint was obligated to make an annual  
 9 payment of principal and interest?  
 10 MR. MORRIS: Objection to the form  
 11 of the question.  
 12 A. Yes, it was – yes, it – it was an  
 13 amortizing note. It was – you know, from what  
 14 we reviewed earlier, it was payable by  
 15 December 31st of each year. So – but are –  
 16 are you asking me –  
 17 Q. I'm just asking you, sir, if you  
 18 recall the note.  
 19 A. Yes, the \$30 million note, yes, we  
 20 reviewed it earlier, yes.  
 21 Q. And do you recall Mr. Morris had you  
 22 go through the fact that NexPoint had made  
 23 payments in years prior to 2020 on that note?  
 24 A. I do.  
 25 Q. And do you believe that employees of

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1 WATERHOUSE - 10-19-21  
 2 Or, sorry, we – I say "we" – I  
 3 keep saying "we" – I keep wearing my – again,  
 4 my – my treasurer hat.  
 5 But, yes, it is to – it is to  
 6 inform Mr. Dondero of the obligations of the  
 7 advisors in terms of cash and obligations that  
 8 are – are upcoming and that – and that are –  
 9 are scheduled to be paid.  
 10 Q. And would those obligations that are  
 11 upcoming and scheduled to be paid prior to 2020  
 12 have incurred the annual payment on that  
 13 NexPoint \$30 million note?  
 14 MS. DANDENEAU: Objection to form.  
 15 MS. DEITSCH-PEREZ: Davor, I think  
 16 you misspoke. You might want to just  
 17 repeat the question.  
 18 Q. Okay. Let me repeat the question,  
 19 sir.  
 20 Prior to 2020, those services that  
 21 you just described, would that – on behalf of  
 22 the debtor, would that have included NexPoint's  
 23 payments on the \$30 million note?  
 24 A. Yes.  
 25 Q. So someone at the debtor in treasury

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1 WATERHOUSE - 10-19-21  
 2 the debtor would have played any role in  
 3 NexPoint having made those prior payments?  
 4 MR. MORRIS: Objection to the form  
 5 of the question.  
 6 A. Yes.  
 7 Q. And what role in years prior to 2020  
 8 would employees of the debtor have had with  
 9 respect to NexPoint making that annual payment?  
 10 A. We – we – we would have – I keep  
 11 saying "we." The team would have calculated  
 12 any amounts due under that loan and other  
 13 loans, as – as standard course.  
 14 We would – since we provided  
 15 treasury services to the advisors, we would  
 16 inform the – the – the – we informed  
 17 Mr. Dondero of any cash obligations that are  
 18 forthcoming, whether we do cash projections.  
 19 If, you know, any of these payments  
 20 would have – or, you know, the sum total of  
 21 all of these payments, including any note  
 22 payments, if there were any cash shortfalls, we  
 23 would have informed Mr. Dondero of any cash  
 24 shortfalls. We could adequately plan, you  
 25 know, in instances like that.

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1 WATERHOUSE - 10-19-21  
 2 or accounting would have sent some schedule or  
 3 a reminder that a payment would be coming due  
 4 in the future. Is that generally the practice?  
 5 A. Yes, we would – you know, again, I  
 6 didn't – I didn't micromanage the teams, but  
 7 we had a – a corporate accounting calendar  
 8 that we use as kind of a tickler file to keep  
 9 track of payments.  
 10 I actually, you know, don't know how  
 11 actively they're using that in – in prior to  
 12 2020, but it was actively used at some point.  
 13 We did look at NexPoint cash  
 14 periodically and cash for the other advisors as  
 15 well and payments. You know, we – payments  
 16 like this would have appeared in our cash  
 17 projections, in the advisor's cash projections.  
 18 And, again, as like I said earlier,  
 19 they would have appeared there, so there would  
 20 be time to plan for making any of these  
 21 payments.  
 22 Q. And based on your experience, would  
 23 it have been reasonable for NexPoint to rely on  
 24 the debtors' employees to inform NexPoint of an  
 25 upcoming payment due on the \$30 million

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1 WATERHOUSE - 10-19-21  
 2 promissory note?  
 3 MR. MORRIS: Objection to form of  
 4 the question.  
 5 MS. DANDENEAU: Objection to form.  
 6 A. Yes. Yes, they did. I mean, but I  
 7 mean, but I don't think these – these notes  
 8 were any secret to anybody.  
 9 Q. I understand, and I'm not suggesting  
 10 otherwise.  
 11 MR. RUKAVINA: Please pull up Alpha  
 12 2, Mr. Nguyen.  
 13 (Exhibit A2 marked.)  
 14 Q. Now, this document is similar to the  
 15 ones we've seen before as of December 31, 2020,  
 16 and I don't see under NTA anything there for  
 17 paying the promissory note to Highland.  
 18 Do you see anything like that?  
 19 A. I do not.  
 20 MR. RUKAVINA: You can pull that –  
 21 that exhibit down, Mr. Nguyen.  
 22 Q. You are aware, of course, by now  
 23 that, in fact, NexPoint failed to make the  
 24 payment due December 31, 2020, are you not?  
 25 A. I am aware, and yes, I do understand

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1 WATERHOUSE - 10-19-21  
 2 borrower failed to make the required payment.  
 3 Are you with me so far?  
 4 A. I am.  
 5 Q. Did anyone then ask you, what should  
 6 we do with respect to our rights against the  
 7 borrower that missed the payment?  
 8 A. Not that I recall.  
 9 Q. Did you play a role in the decision  
 10 to accelerate that \$30 million promissory note?  
 11 A. I did not.  
 12 Q. Do you recall whether Mr. Seery ever  
 13 asked you before the acceleration as to whether  
 14 he should accelerate the note?  
 15 A. I don't recall.  
 16 Q. And you don't recall when you  
 17 learned of the acceleration itself?  
 18 MR. MORRIS: Objection to the form  
 19 of that question.  
 20 A. It was – it was sometime in  
 21 early – in early 2021. I don't remember  
 22 specifically.  
 23 Q. But do you recall whether it was  
 24 after the acceleration had already been  
 25 transmitted?

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1 WATERHOUSE - 10-19-21  
 2 it.  
 3 Q. Were you aware that Highland  
 4 accelerated that \$30 million promissory note?  
 5 A. I am aware.  
 6 Q. Were you aware of that acceleration  
 7 at the time that it occurred?  
 8 A. I don't remember specifically.  
 9 Q. Do you recall whether anyone asked  
 10 you – prior to the acceleration, anyone asked  
 11 you at Highland, what Highland should do with  
 12 respect to the missed payment?  
 13 A. Did anyone ask me what Highland  
 14 should do about the missed payment?  
 15 Q. Yes, before acceleration.  
 16 MR. MORRIS: Objection to the form  
 17 of the question.  
 18 A. I mean, what – what I recall is  
 19 there was the – sorry, are you asking me –  
 20 MS. DANDENEAU: Why don't you just  
 21 repeat the question, Mr. Rukavina.  
 22 Q. Let me try again, Mr. Waterhouse,  
 23 let me try again.  
 24 I am saying you're the CFO of  
 25 someone, in this case, Highland, and the

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1 WATERHOUSE - 10-19-21  
 2 MS. DANDENEAU: Objection to the  
 3 form of the question.  
 4 A. I don't recall.  
 5 Q. Do you recall in early to mid  
 6 January of 2021, after the default, discussing  
 7 the default with Mr. Dondero?  
 8 A. I do recall discussing with  
 9 Mr. Dondero after December 31, 2020?  
 10 Q. Yes, the fact of the default.  
 11 A. I don't recall.  
 12 MR. RUKAVINA: Let's pull up my  
 13 Exhibit 6, Alpha 6.  
 14 (Exhibit A6 marked.)  
 15 MR. RUKAVINA: And, Mr. Nguyen, if  
 16 you will please scroll down.  
 17 Q. This email chain begins with you  
 18 writing to Ms. Hendrix on January the 12th:  
 19 NexPoint note to HCMLP.  
 20 Do you see that, sir?  
 21 A. I do.  
 22 Q. Were you discussing this same  
 23 \$30 million note we're talking about right now  
 24 with Ms. Hendrix?  
 25 A. Yes.

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Do you recall what prompted  
 3 you to send that email to her?  
 4 A. Yes, I had -- I had a conversation  
 5 with Jim.  
 6 Q. Okay. And what -- what did you  
 7 discuss with Jim that led to this email chain?  
 8 A. He -- he called me and he said he  
 9 wanted to make payment on the NexPoint note,  
 10 and I didn't -- I didn't know the -- the amount  
 11 offhand, so I reached out to Kristin and got  
 12 the details and relayed that to him.  
 13 Q. And you see you sent that email to  
 14 her at 11:15 a.m. Does that help you remember  
 15 when you had this discussion with Mr. Dondero?  
 16 In other words, was it that morning or the day  
 17 before, or can you -- can you --  
 18 A. No, it was -- it was that morning.  
 19 Q. And do you recall how you had that  
 20 conversation with him?  
 21 MR. MORRIS: Objection to the form  
 22 of the question.  
 23 Q. By telephone, by email, in-person?  
 24 A. Yeah, he -- he called me. I was at  
 25 home. We were working from home here in

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1 WATERHOUSE - 10-19-21  
 2 Mr. Dondero, was -- was it also on January  
 3 12th?  
 4 A. Sorry, when I conveyed the  
 5 \$1.4 million number?  
 6 Q. Yes.  
 7 A. Yes, yes, it was that -- it was --  
 8 Q. So you had --  
 9 A. It was that point.  
 10 Q. Well, to the best of your  
 11 recollection, you had a conference with  
 12 Mr. Dondero by the telephone in the morning,  
 13 and then another conference with him by  
 14 telephone after 11:40 a.m. that morning?  
 15 A. Yeah, I can't remember -- yeah, it  
 16 was either that morning or it could have been,  
 17 you know, early afternoon, but again, I  
 18 remember calling him back, relaying this  
 19 information to him, and he said, okay, pay --  
 20 you know, make -- make this payment.  
 21 Q. And during either of those two  
 22 calls, did you tell Mr. Dondero anything to the  
 23 effect that making those -- I'm sorry, making  
 24 that payment would not de-accelerate the  
 25 promissory note?

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1 WATERHOUSE - 10-19-21  
 2 December of 2020. He called me from home. He  
 3 said he was in court. He wanted to -- he asked  
 4 about, you know, making payment on the note and  
 5 the amount, and so I didn't have those numbers  
 6 in front of me, so I said I would get back to  
 7 him. I wanted all the details, so here is  
 8 this -- so I reached out to Kristin.  
 9 Q. And then she gave you that  
 10 \$1,406,000 figure?  
 11 MR. RUKAVINA: Mr. Nguyen, if you  
 12 will scroll up, please.  
 13 A. Yes. Yeah, she -- the \$1,406,112.  
 14 Q. And do you recall whether you  
 15 conveyed that amount to Mr. Dondero?  
 16 A. Yes. I -- I called him back and  
 17 gave him -- gave him this amount.  
 18 Q. Are you aware of whether NexPoint,  
 19 in fact, then made that 1 million 406 and  
 20 change payment?  
 21 A. Yes, they did.  
 22 Q. Did you discuss with Mr. Dondero at  
 23 that time, either the first conference or the  
 24 second conference that day -- strike that.  
 25 When you conveyed the number to

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1 WATERHOUSE - 10-19-21  
 2 A. No.  
 3 Q. Did you tell him anything to the  
 4 effect that making that payment would not cure  
 5 the default?  
 6 A. No.  
 7 Q. Did you discuss that in any way with  
 8 him?  
 9 A. No, I did not.  
 10 Q. Did he say why he wanted to have  
 11 that \$1.4 million payment made?  
 12 MR. MORRIS: Objection to the form  
 13 of the question.  
 14 A. He -- he -- he didn't go into  
 15 specifics.  
 16 Q. Did he say anything to you to the  
 17 effect that if NexPoint makes that payment,  
 18 then the note will be de-accelerated?  
 19 MR. MORRIS: Objection to the form  
 20 of the question.  
 21 A. I don't recall.  
 22 MR. RUKAVINA: You can put this one  
 23 down, Mr. Nguyen.  
 24 Q. And, again, when you say you don't  
 25 recall, you mean you don't remember right now

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1 WATERHOUSE - 10-19-21  
 2 either way; correct?  
 3 A. Yeah, I don't remember. I don't  
 4 remember us discussing that.  
 5 Q. Now – and we're almost done, I  
 6 promise. I'm just going to – I don't know how  
 7 to ask this question, so I'm just going to try  
 8 to do my best.  
 9 Prior to the default on December 31,  
 10 2020, did Mr. Seery ever tell you any words to  
 11 the effect that you or someone at Highland  
 12 should ensure that NexPoint doesn't make its  
 13 payment?  
 14 A. No.  
 15 Q. Did you have any hint or any belief  
 16 that anyone at NexPoint – I'm sorry, strike  
 17 that.  
 18 Did you have any reason to believe  
 19 that anyone with Highland was actively trying  
 20 to get NexPoint to make that default by not  
 21 paying on December 31?  
 22 MR. MORRIS: Objection to the form  
 23 of the question.  
 24 A. Are you asking, did any Highland  
 25 employees actively work to make – to

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1 WATERHOUSE - 10-19-21  
 2 given or taken at Highland by Mr. Seery, the  
 3 independent board, DSI, that – that would have  
 4 basically led Highland to ensure that NexPoint  
 5 would fail to make that payment?  
 6 A. I'm not aware.  
 7 Q. In other words, there wasn't a trick  
 8 or a settlement; right?  
 9 MS. DEITSCH-PEREZ: Objection to  
 10 form.  
 11 MS. DANDENEAU: Object to form.  
 12 MR. MORRIS: Object to form.  
 13 A. I'm not aware.  
 14 Look, I'm not aware. I'm not in  
 15 every conversation. I mean, and I'm just –  
 16 again, I'm sitting at home. It is the end of  
 17 the year. Again, I'm not aware.  
 18 Q. That is a perfectly legitimate  
 19 answer. I don't know why – why you think  
 20 otherwise.  
 21 Okay. Just give me one second to  
 22 compose my thoughts.  
 23 MS. DEITSCH-PEREZ: While you're  
 24 taking your one second, why don't we take  
 25 three minutes. I will be right back.

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1 WATERHOUSE - 10-19-21  
 2 somehow –  
 3 Q. Yes. Let me take a step back. Let  
 4 me take a step back.  
 5 So you are aware now that as a  
 6 result of that default, what was still some  
 7 25-year note was accelerated and became  
 8 immediately due. You are aware of that now;  
 9 right?  
 10 A. Yes.  
 11 Q. And can you see how someone at  
 12 Highland might actually have been pleased with  
 13 that development?  
 14 MR. MORRIS: Objection to the form.  
 15 Q. Not that they were – not that they  
 16 were pleased, but you can see how someone at  
 17 Highland might have been pleased with that  
 18 development?  
 19 MR. MORRIS: Objection to the form  
 20 of the question.  
 21 MS. DANDENEAU: Object to form.  
 22 A. I don't know how they would have  
 23 reacted to that.  
 24 Q. Okay. But you're not – you're not  
 25 aware of any instructions or any actions being

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1 WATERHOUSE - 10-19-21  
 2 VIDEOGRAPHER: Do we want to go off  
 3 the record?  
 4 MR. RUKAVINA: Yes.  
 5 VIDEOGRAPHER: All right. We're  
 6 going off the record at 6:27 p.m.  
 7 (Recess taken 6:27 p.m. to 6:30 p.m.)  
 8 VIDEOGRAPHER: We are back on the  
 9 record at 6:30 p.m.  
 10 MR. HORN: Is Deb back?  
 11 MS. DANDENEAU: Are you asking about  
 12 me? I'm here.  
 13 MR. HORN: Oh, okay. I don't see  
 14 you, sorry.  
 15 Q. Actually, yeah, Mr. Waterhouse, so  
 16 when you had –  
 17 MS. DANDENEAU: Are you asking about  
 18 Deb Dandeneau or Deborah? I mean, there  
 19 are a lot – as we talked about, a lot of  
 20 Debs. I'm here.  
 21 MS. DEITSCH-PEREZ: I'm here.  
 22 MR. HORN: Yes, I was asking about  
 23 DDP.  
 24 MS. DEITSCH-PEREZ: Oh, DDP is here.  
 25 MR. HORN: Okay. Here we go. I'm



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1 WATERHOUSE - 10-19-21  
 2 going back on mute.  
 3 MS. DANDENEAU: Get the right  
 4 nomenclature.  
 5 Q. Mr. Waterhouse, on January 12th,  
 6 2021, when you had those talks with Mr. Dondero  
 7 about the \$1.4 million payment, did you have a  
 8 communication or a conversation with Mr. Seery  
 9 about that payment after January 12th, 2021?  
 10 A. I don't recall.  
 11 Q. Well, in response to Mr. Dondero  
 12 reaching out to you, do you recall on that day,  
 13 January 12th, talking to Mr. Seery or anyone at  
 14 Highland other than the email chain we just saw  
 15 about Mr. Dondero's call with you?  
 16 A. Did I talk to – I spoke with  
 17 Kristin – I don't know if I spoke to her. I  
 18 likely spoke to Kristin Hendrix because we had  
 19 to get the wire on NexPoint's behalf to make  
 20 the payment to Highland.  
 21 Q. So it is true, then, that – that  
 22 employees of the debtor did actually cause that  
 23 payment to be made when it was made after  
 24 January 12th?  
 25 A. Yes, I mean, we – we – as I

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1 WATERHOUSE - 10-19-21  
 2 time.  
 3 MR. RUKAVINA: Pass the witness.  
 4 MR. MORRIS: I just have a few  
 5 questions, if I may.  
 6 MS. DEITSCH-PEREZ: Don't you go at  
 7 the end?  
 8 MR. MORRIS: Oh, I apologize. He is  
 9 your witness. I'm surprised you want to  
 10 ask him questions, but go right ahead.  
 11 MS. DEITSCH-PEREZ: Just have a  
 12 couple of things.  
 13 MR. RUKAVINA: And I will just  
 14 object to that, that he's our witness.  
 15 That's not –  
 16 MR. MORRIS: I'm not talking to you.  
 17 I'm not talking to you.  
 18 MS. DANDENEAU: Also, Mr. Morris, it  
 19 is – it is –  
 20 MS. DEITSCH-PEREZ: He is not my  
 21 witness. He's been subpoenaed by you.  
 22 Okay?  
 23 That is no offense, Mr. Waterhouse,  
 24 I'm – I'm not – okay. Anyway.  
 25 EXAMINATION

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1 WATERHOUSE - 10-19-21  
 2 testified earlier, we provided that accounting  
 3 finance treasury function as – under the  
 4 shared services agreement. And so once I  
 5 got the – I talked to Jim, got the approval to  
 6 make this payment, we have to then make the  
 7 payment, or the team does, and so the payment  
 8 was made.  
 9 Q. Okay. But – okay. And – and  
 10 sitting here right now, after Jim called you,  
 11 you don't remember talking to anyone other than  
 12 the – the couple of people you mentioned,  
 13 talking to anyone about something to the effect  
 14 that, hey, Jim wants to make this payment now?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. I don't – I don't recall.  
 18 Q. And does that include legal counsel?  
 19 Without going into any detail, on  
 20 January 12th or before that payment was made,  
 21 did you consult with legal counsel about  
 22 anything having to do with the \$1.4 million  
 23 payment?  
 24 A. I don't recall.  
 25 Q. Okay. Thank you, sir, for your

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1 WATERHOUSE - 10-19-21  
 2 BY MS. DEITSCH-PEREZ:  
 3 Q. Good evening. I'm very sorry to be  
 4 going last and I know you have had a long and  
 5 taxing day, so I thank you for indulging me.  
 6 The kinds of services that you  
 7 describe that the – that Highland provided for  
 8 NexPoint, did Highland also provide similar  
 9 services to that to HCRE and HCMS?  
 10 A. Yes.  
 11 MR. MORRIS: Objection to the form  
 12 of the question.  
 13 Q. What kind of services did Highland  
 14 provide to HCRE and HCMS?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 MS. DEITSCH-PEREZ: What is your  
 18 objection, John?  
 19 MR. MORRIS: It is vague and  
 20 ambiguous. Unlike the advisors and  
 21 NexPoint, they actually had shared services  
 22 agreements.  
 23 MS. DEITSCH-PEREZ: I got – I  
 24 understand your objection. That is fine.  
 25 Q. Let's take them one at a time.

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1 WATERHOUSE - 10-19-21  
 2 What kinds of services did Highland  
 3 provide to HCRE?  
 4 MR. MORRIS: Objection to the form  
 5 of the question.  
 6 A. HCMS, Highland employees provided  
 7 accounting services, treasury management  
 8 services, potentially legal services. I  
 9 don't – but I wouldn't have been directly  
 10 involved in that. But as far as the teams that  
 11 I manage, it was accounting, treasury, things  
 12 of that nature.  
 13 Q. Okay. And that was for HCM, LLP –  
 14 A. And – and, sorry, it would also be  
 15 any asset valuation if needed as well.  
 16 Q. Okay. We went back and forth on  
 17 each other and I apologize, so just to clarify.  
 18 You were talking about the services  
 19 that Highland Capital Management provided to  
 20 HCMS; is that right?  
 21 A. HCMS. So, again, yes. And  
 22 accounting, treasury, valuation, and also tax  
 23 services too.  
 24 Q. Okay.  
 25 A. Tax services. Look, I'm expanding

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1 WATERHOUSE - 10-19-21  
 2 HCMLP cause HCMS to pay its bills?  
 3 MR. MORRIS: Objection to the form  
 4 of the question.  
 5 A. I mean, it – it – it depend – it  
 6 depended on the nature of the payment and the  
 7 vendor, but, you know, if there were – if  
 8 there were larger scheduled payments, you know,  
 9 I would like to give at least 30 days notice.  
 10 And that is – that is kind of my  
 11 rule of thumb so no one is surprised.  
 12 Q. Okay. And was it generally HCMLP's  
 13 practice to timely pay HCMS' bills?  
 14 MR. MORRIS: Objection to the form  
 15 of the question.  
 16 A. It – it – it – that depended on  
 17 the nature of the payment.  
 18 Q. Okay. And can you explain what you  
 19 mean by that?  
 20 A. Yeah, I mean if – if it was – I  
 21 mean – if there was some professional fees  
 22 that weren't – you know, they were due but  
 23 they weren't urgent, those fees may not be paid  
 24 as timely as others that have a due date or –  
 25 or things like that.

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1 WATERHOUSE - 10-19-21  
 2 this, their HR services as well.  
 3 Q. Okay. And did that include bill  
 4 paying?  
 5 MR. MORRIS: Objection to the form  
 6 of the question.  
 7 Q. Did the services that HCM provided  
 8 to HCMS include bill paying?  
 9 MR. MORRIS: Objection to the form  
 10 of the question.  
 11 A. Yes.  
 12 Q. And did the services that HCMLP  
 13 provided to HCMS include scheduling upcoming  
 14 bills?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. Yes.  
 18 Q. And did HCMLP regularly pay – cause  
 19 to be paid the payments on loans HCMS had from  
 20 HCMLP?  
 21 MR. MORRIS: Objection to the form  
 22 of the question.  
 23 A. Yes.  
 24 Q. Typically – if there is a  
 25 typically, how far in advance of due dates did

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1 WATERHOUSE - 10-19-21  
 2 Q. Okay. Are loan payments the kinds  
 3 of thing that HCMLP would pay on time because  
 4 of potential consequences of not paying on  
 5 time?  
 6 MR. MORRIS: Objection to the form  
 7 of the question.  
 8 A. Yes. As I testified earlier, we  
 9 would want to give, you know, notice on – on  
 10 – on larger payments and – and things of that  
 11 nature so we didn't miss due dates.  
 12 Q. Okay. And over the course of time,  
 13 did HCMLP generally pay HCMS' loan payments in  
 14 a timely fashion?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. I can't remember specifically, but  
 18 generally, yes.  
 19 Q. Okay. Now, did HCMLP provide  
 20 similar services to HCRE that you have  
 21 described it provided to HCMS?  
 22 MR. MORRIS: Objection to the form  
 23 of the question.  
 24 A. Yes, but I don't think it – it  
 25 provided – I don't think it provided HR

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1 WATERHOUSE - 10-19-21  
 2 services.  
 3 Q. Can you describe the accounting and  
 4 treasury services that HCMLP provided for HCRE?  
 5 A. Yeah, it – it would provide  
 6 bookkeeping services on a – on a periodic  
 7 basis. It would make payments, you know, as  
 8 needed.  
 9 Q. Okay. So did it provide –  
 10 A. And – and I believe it – it – it  
 11 provided tax services as well.  
 12 Q. Okay. And so did it provide the  
 13 same kind of bill – did HCMLP provide the same  
 14 kind of bill-paying services for HCRE that it  
 15 provided for HCMS and NexPoint?  
 16 MR. MORRIS: Objection to the form  
 17 of the question.  
 18 A. Yes.  
 19 Q. And over the course of time, did  
 20 HCMLP generally cause to be made the loan  
 21 payments that HCRE owed to HCMLP?  
 22 MR. MORRIS: Objection to the form  
 23 of the question.  
 24 A. Yes.  
 25 Q. Did HCMLP make loan payment – the

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1 WATERHOUSE - 10-19-21  
 2 made?  
 3 MR. MORRIS: Objection to the form  
 4 of the question.  
 5 A. It was – it was cash in HCRE's bank  
 6 account that would be used to make payments to  
 7 Highland Capital Management.  
 8 Q. Okay. And so did Highland Capital  
 9 Management have access to HCRE's funds in order  
 10 to be able to make such payments?  
 11 MR. MORRIS: Objection to the form  
 12 of the question.  
 13 A. Personnel at Highland Capital  
 14 Management had access to HCRE's bank account to  
 15 effectuate the payments.  
 16 Q. Okay. And was the payment due from  
 17 HCRE to HCMLP due in December of 2020 made?  
 18 A. It –  
 19 Q. In December of 2020.  
 20 A. It was not.  
 21 Q. Okay. And was there money in HCRE's  
 22 account that would have enabled the payment to  
 23 be made had HCM personnel attempted to make the  
 24 payment?  
 25 MR. MORRIS: Objection to the form

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1 WATERHOUSE - 10-19-21  
 2 loan payment that was due from HCMS to HCMLP in  
 3 December of 2020?  
 4 MR. MORRIS: Objection to the form  
 5 of the question.  
 6 A. I don't believe that payment –  
 7 payment was made.  
 8 Q. Okay. And when HCMLP caused HCMS in  
 9 the past to make loan payments, whose money did  
 10 it use to make those payments?  
 11 MR. MORRIS: Objection to the form  
 12 of the question.  
 13 A. It was the – the money in HCMS's  
 14 operating account would be made to that –  
 15 those moneys would be used to make payment to  
 16 Highland Capital Management.  
 17 Q. Okay. And Highland – is it correct  
 18 that Highland Capital Management personnel had  
 19 the access to HCMS's accounts to be able to  
 20 cause such payments to be made?  
 21 A. Yes, Highland personnel had access  
 22 to those accounts.  
 23 Q. Okay. And so now for HCRE, whose  
 24 money was used when HCMLP caused HCRE  
 25 payments – loan payments to Highland to be

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1 WATERHOUSE - 10-19-21  
 2 of the question.  
 3 A. I – I don't recall.  
 4 Q. Do you have any reason to believe  
 5 that either HCRE or HCMS simply didn't have the  
 6 funds on hand to make the December 2020  
 7 payments?  
 8 A. I don't know.  
 9 Q. I guess I'm asking, do you have any  
 10 reason to believe that they didn't have the  
 11 funds?  
 12 A. We managed cash for so many  
 13 different entities and funds, and I don't  
 14 recall, you know, where the cash position was  
 15 for HCRE and HCMS at 12/31/2020.  
 16 Q. Okay.  
 17 A. I just don't recall, and I don't –  
 18 and I don't remember what the loan payment  
 19 obligations were from HCRE to Highland, and  
 20 from HCMS to Highland. I don't recall. I  
 21 don't recall, I mean...  
 22 Q. Let me come at it a different way.  
 23 Were the – were the payments that would  
 24 otherwise have been due in December of 2020  
 25 made in January of 2021 for HCMS and HCRE?

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1 WATERHOUSE - 10-19-21  
 2 A. I believe the HCRE payment was made  
 3 in January of 2021. I don't recall any  
 4 payments being made from HCMS to Highland.  
 5 Q. If it – how is it the HCRE payment  
 6 came to be made? Why did you make it – why  
 7 did HCM make the payment in January of 2021?  
 8 A. Jim – Jim called me and instructed  
 9 me to – to make the payment on behalf of HCRE,  
 10 Jim Dondero – Jim Dondero.  
 11 Q. Did he seem upset that – that the  
 12 payment had not been made?  
 13 A. Yeah. On the note that was, you  
 14 know, that was the term note, yes, he – he was  
 15 displeased that the – that the payment had not  
 16 been made by year-end.  
 17 Q. Okay. And did you make the – cause  
 18 the payment to be made as – as requested?  
 19 A. Yes.  
 20 Q. And did anyone else from HCM  
 21 participate with you in causing the payment to  
 22 be made to – on the HCRE loan?  
 23 A. Yes. It would have been Kristin  
 24 Hendrix. I – again, I don't – as I testified  
 25 earlier, I'm not an officer of HCRE. I don't

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1 WATERHOUSE - 10-19-21  
 2 Q. Do you know whether there was an  
 3 HCMS term loan that had a payment due in  
 4 December of 2020?  
 5 A. I don't recall.  
 6 Q. Okay. And so the reason you don't  
 7 recall whether or not there was a payment in  
 8 January of 2021 is because you just don't  
 9 remember whether there was such a loan at all?  
 10 MR. MORRIS: Objection to the form  
 11 of the question.  
 12 A. I don't remember. There is – there  
 13 is so many notes, and I mean, demands, and I  
 14 don't – I don't remember. It's a lot to keep  
 15 track in your head.  
 16 Q. I understand, and – and I hear your  
 17 frustration when you have explained that the  
 18 debtor has your documents and you don't, and so  
 19 I fully appreciate it, and this is no knock on  
 20 you. It's a knock on somebody else on this  
 21 call.  
 22 MR. MORRIS: I move to strike. That  
 23 was pretty obnoxious, but go ahead.  
 24 Q. Okay. But so, Mr. Waterhouse, if –  
 25 if a payment on the HCMS loan was made in

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1 WATERHOUSE - 10-19-21  
 2 believe I'm an authorized signer. So I  
 3 can't – other personnel have to make payment  
 4 from HCRE to – to – to – to Highland.  
 5 Q. Okay. And in the conversation  
 6 that – that you had with Mr. Dondero when he  
 7 requested the payment to be made, did you say  
 8 to him words to the effect, Jim, this loan is  
 9 going to stay in default, what are you making  
 10 the payment for, anything like that?  
 11 A. No.  
 12 Q. In fact, did you have the impression  
 13 from him that he thought that the loan would  
 14 be – the default would be cured by making the  
 15 payment?  
 16 MR. MORRIS: Objection to the form  
 17 of the question.  
 18 A. Did I get the impression from Jim  
 19 Dondero that the loan would be cured if the  
 20 payment from HCRE –  
 21 Q. Yeah, if that is what he thought.  
 22 MR. MORRIS: Objection to the form  
 23 of the question.  
 24 A. I didn't get any impression from him  
 25 on that at the time.

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1 WATERHOUSE - 10-19-21  
 2 January of 2021, do you think it was part of  
 3 the same conversation where Jim Dondero said,  
 4 hey, why didn't that get paid, please make  
 5 that – get that payment done?  
 6 MR. MORRIS: I object to the form of  
 7 the question.  
 8 A. Yes. Likely it would have been – I  
 9 mean, again, I don't recall a payment being  
 10 made, but, you know, again, I don't remember  
 11 everything.  
 12 Q. Okay. Did – at the time you were  
 13 communicating with Kristin Hendrix about the  
 14 payment being made, whichever payments were  
 15 made in January, did she say anything to you  
 16 about the payments not curing the loan  
 17 defaults?  
 18 A. No.  
 19 Q. Okay. All right. So I'm going to  
 20 take you back to very early in the deposition  
 21 when Mr. Morris was asking you about the –  
 22 the – the – the agreement with respect to  
 23 the – the forgiveness element of the loans, so  
 24 that is just to orient you.  
 25 Do you remember that there was a

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1 WATERHOUSE - 10-19-21  
 2 time that you and Mr. Dondero were  
 3 communicating about potential means of  
 4 resolving the Highland bankruptcy by what was  
 5 colloquially referred to as a pot plan?  
 6 A. Yes.  
 7 Q. Okay. And can you tell me generally  
 8 when that was?  
 9 A. Like mid -- mid 2020, sometime in  
 10 2020, mid 2020.  
 11 Q. Okay. And did the process of trying  
 12 to figure out what the numbers should be  
 13 involve looking at what one should pay for the  
 14 Highland assets?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. Yes.  
 18 Q. Okay. And did there come a time  
 19 when you were proposing some potential numbers  
 20 and Mr. Dondero said something to you like,  
 21 well, why are you including payment for the  
 22 related party notes, those, you know, were  
 23 likely to be forgiven as part of my deferred  
 24 executive compensation?  
 25 MR. MORRIS: Objection to the form

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1 WATERHOUSE - 10-19-21  
 2 of the question.  
 3 A. Yes, we -- the team and myself put  
 4 together, you know, asset summaries of Highland  
 5 at various times for all the assets of  
 6 Highland, and not including the notes.  
 7 Q. Okay. And were those presentations  
 8 communicated to -- to Mr. Seery?  
 9 A. No. Well, look, I didn't tell -- I  
 10 didn't tell Mr. Seery. I don't know what  
 11 Mr. Dondero did with the information.  
 12 Q. Okay.  
 13 A. I did not have conversations with  
 14 Mr. Seery.  
 15 Q. Okay. Do you know who saw the  
 16 presentations that you put together that didn't  
 17 include the value of the related party notes?  
 18 A. We're talking presentations -- these  
 19 are -- these are Excel spreadsheets?  
 20 Q. Uh-huh.  
 21 A. I don't know who -- these were given  
 22 to -- to Jim Dondero. I don't know what was  
 23 done with them after that.  
 24 Q. Okay. You also mentioned earlier  
 25 that sometime during your tenure at Highland

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1 WATERHOUSE - 10-19-21  
 2 of the question.  
 3 A. Yes, we did have that conversation.  
 4 Q. Okay. Was that conversation in  
 5 connection with trying to figure out the right  
 6 numbers for a pot plan?  
 7 A. Yeah. I mean, it was -- it was -- I  
 8 mean, Jim -- Jim would ask for, you know,  
 9 most -- most recent asset values, you know, for  
 10 Highland, and -- and myself and the team  
 11 provided those to him, so it was in that  
 12 context.  
 13 Q. Okay. And does that refresh your  
 14 recollection that these communications were in  
 15 2020 rather than 2021?  
 16 MR. MORRIS: Objection to the form  
 17 of the question.  
 18 A. The -- the -- the executive  
 19 compensation discussions were definitely in  
 20 2020.  
 21 Q. Okay. Now, did you ever make  
 22 proposals that took into account Jim's comment  
 23 that the notes were likely to end up forgiven  
 24 as part of his compensation?  
 25 MR. MORRIS: Objection to the form

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1 WATERHOUSE - 10-19-21  
 2 you knew of the practice of giving forgivable  
 3 loans to executives.  
 4 MR. MORRIS: Objection to the form  
 5 of the question.  
 6 Q. Can you -- can you tell me what you  
 7 recall about that practice?  
 8 MR. MORRIS: Objection to the form  
 9 of the question.  
 10 A. Yes, so there were -- there were --  
 11 during my tenure at Highland, there were loans  
 12 or -- given to employees that were later  
 13 forgiven at a future date and time.  
 14 Q. Okay. And when the loans were  
 15 given, did the notes, to your recollection, say  
 16 anything about the potential forgiveness term?  
 17 MR. MORRIS: Objection to the form  
 18 of the question.  
 19 A. When you say "did the notes," did  
 20 the promissory notes detail the forgiveness?  
 21 Q. Yes.  
 22 A. Not that I recall.  
 23 Q. And until such time as whatever was  
 24 to trigger the forgiveness occurred, were the  
 25 notes bona fide notes as far as you were

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1 WATERHOUSE - 10-19-21  
 2 concerned?  
 3 MR. MORRIS: Objection to the form  
 4 of the question.  
 5 A. Yes, similar to – yes.  
 6 Q. Okay. You were going to say similar  
 7 to what?  
 8 A. Mr. Morris earlier today showed  
 9 notes of the financial statements about various  
 10 affiliate loans. I – I – I do recall these  
 11 notes because I – at that time personally  
 12 worked on the – the financial statements of  
 13 Highland. That was, you know, in my role as a  
 14 corporate accountant.  
 15 And there were – those loans  
 16 were – to the partners were detailed in the  
 17 notes to the financial statements, similar to  
 18 what we went through earlier today in the prior  
 19 testimony about what we saw with Highland  
 20 and – and – and the – and HCMFA.  
 21 Q. Is it fair to say that on Highland's  
 22 balance sheet there were any number of assets  
 23 that the value of which could be affected by  
 24 subsequent events?  
 25 MR. MORRIS: Objection to the form

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1 WATERHOUSE - 10-19-21  
 2 of the question.  
 3 A. The accounting standard is you have  
 4 to estimate to the best – you know, to – to  
 5 the best of your ability, the fair value of an  
 6 asset as of the balance sheet date under –  
 7 under GAAP.  
 8 Q. Did – strike that.  
 9 Okay. Give me a minute. I'm  
 10 close – I'm close to done. Let me just go off  
 11 and look at my notes for a second. So take two  
 12 minutes.  
 13 VIDEOGRAPHER: We're going off the  
 14 record at 7:02 p.m.  
 15 (Recess taken 7:02 p.m. to 7:03 p.m.)  
 16 VIDEOGRAPHER: We are back on the  
 17 record at 7:03 p.m.  
 18 Q. Mr. Waterhouse, is it generally your  
 19 understanding that people you work with now  
 20 have been asking the debtor for full and  
 21 unfettered access to their own former files?  
 22 MR. MORRIS: Objection to the form  
 23 of the question.  
 24 A. Yes, I am – I am generally aware.  
 25 Q. Okay. And do you think you could

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1 WATERHOUSE - 10-19-21  
 2 of the question.  
 3 A. Yes. I mean, yes, that – there  
 4 are. And that is – yes.  
 5 Q. Okay. And is it typical accounting  
 6 practice that until there is some certainty  
 7 about those potential future events, that asset  
 8 value listed on – on the books doesn't take  
 9 into account those potential future events?  
 10 MR. MORRIS: Objection to the form  
 11 of the question.  
 12 A. Yeah, if those – yes. If – if  
 13 those future events, you know, at the time of  
 14 issuance are not known or knowable, like I  
 15 discussed earlier with, like, market practice,  
 16 asset dislocation, or, you know, I mean, things  
 17 like that, you – I mean, it – it could affect  
 18 its fair value –  
 19 Q. Okay.  
 20 A. – in the future.  
 21 Q. And am I correct you wouldn't feel  
 22 compelled to footnote in every possible change  
 23 in – in an asset when those possibilities are  
 24 still remote?  
 25 MR. MORRIS: Objection to the form

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1 WATERHOUSE - 10-19-21  
 2 have been better prepared for this deposition  
 3 if the debtor had complied with those requests?  
 4 MR. MORRIS: Objection to the form  
 5 of the question.  
 6 A. I – I – I most certainly – yes.  
 7 I mean, again, these are multiple years,  
 8 multiple years ago, lots and lots of  
 9 transactions.  
 10 You know, we asked about NAV errors  
 11 and, you know, things like that and these  
 12 are – it would make this process a lot more –  
 13 a lot easier and if we had – if we had access  
 14 to that.  
 15 Q. Okay. And has the debtor – is the  
 16 debtor suing you right now?  
 17 A. Yes.  
 18 Q. And is the debtor trying to renege  
 19 on deals that it had previously made with you?  
 20 MR. MORRIS: Objection to the form  
 21 of the question.  
 22 A. Sorry, I need to – it is my  
 23 understanding that the litigation trust is  
 24 suing me. And not being a lawyer, I don't  
 25 know – is that the debtor?

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1 WATERHOUSE - 10-19-21  
 2 Is that – I don't know the  
 3 relationship. So, again, I'm not the lawyers.  
 4 I've said many times. But my understanding is  
 5 the litigation trust is suing me. I could be  
 6 wrong there. I don't know.  
 7 Q. Okay. I understand.  
 8 Someone with some connection to the  
 9 Highland debtor has brought a claim against  
 10 you; is that fair?  
 11 MR. MORRIS: Objection to the form  
 12 of the question.  
 13 A. Yes.  
 14 Q. Okay. And is there also some motion  
 15 practice in the bankruptcy where the debtor or  
 16 someone associated with the debtor is  
 17 attempting to undo something that was  
 18 previously resolved with you?  
 19 A. Yes.  
 20 Q. And so in one action somebody is  
 21 associated with the debtors trying to –  
 22 threatening you with trying to take money from  
 23 you, and then in the other – and trying to –  
 24 and in the other they are threatening not to  
 25 pay you things that had previously been agreed;

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1 WATERHOUSE - 10-19-21  
 2 I really don't want to go – go  
 3 afield –  
 4 MS. DEITSCH-PEREZ: Yeah.  
 5 MS. DANDENEAU: – and open up a  
 6 whole new line of inquiry about the lawsuit  
 7 or the – the motion and the bankruptcy  
 8 court. We will be here all night.  
 9 MS. DEITSCH-PEREZ: And I  
 10 understand.  
 11 Q. My – my point is: Do you feel  
 12 like – like there is some effort by these  
 13 parties related to the debtor to intimidate  
 14 you – not that you – I'm not saying you are  
 15 or you aren't.  
 16 But do you feel like there is some  
 17 effort to intimidate you and maybe an effort to  
 18 deter you from being as prepared as you might  
 19 be in this deposition?  
 20 MR. MORRIS: Objection to the form  
 21 of the question.  
 22 A. I was – I was surprised by the  
 23 lawsuit, by me being named, because, again, I  
 24 don't own the asset and things like that.  
 25 Yeah, I just – I want to move forward with my

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1 WATERHOUSE - 10-19-21  
 2 is that correct?  
 3 MR. MORRIS: Objection to the form  
 4 of the question.  
 5 A. I want to be – yes, I – there  
 6 is – I'm being sued, again, on – on something  
 7 that was agreed to with Mr. Seery and myself.  
 8 I don't – I don't – I don't own that claim.  
 9 Q. Okay.  
 10 A. To be transparent, I don't own that  
 11 claim. So it is not my personal property.  
 12 Q. Okay.  
 13 A. And – and being the nonlawyer, I  
 14 don't know how I can get sued for something  
 15 that I don't owe or, like, I don't own  
 16 anything. I'm not the lawyer. But, I mean, if  
 17 that is – if I'm understanding the facts  
 18 correctly.  
 19 Q. Okay. And the lawsuit that was  
 20 filed that names you, that was just filed  
 21 this – this past week; is that right?  
 22 MS. DANDENEAU: Ms. Deitsch-Perez, I  
 23 do want to interrupt at this point because  
 24 just as I told Mr. Morris, that this is a  
 25 deposition about the noticed litigation.

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1 WATERHOUSE - 10-19-21  
 2 life at Skyview.  
 3 MS. DEITSCH-PEREZ: Thank you.  
 4 THE WITNESS: Thank you.  
 5 FURTHER EXAMINATION  
 6 BY MR. MORRIS:  
 7 Q. If I may, I just have a few  
 8 questions.  
 9 Mr. Waterhouse, we saw a number of  
 10 documents that Mr. Rukavina put up on the  
 11 screen where Ms. Hendrix would send you a  
 12 schedule of payments that were due on behalf of  
 13 certain Highland affiliates.  
 14 Do you remember that?  
 15 A. Yes.  
 16 Q. And in each instance she asked for  
 17 your approval to make the payments; is that  
 18 right?  
 19 A. Yes, she did.  
 20 Q. And was that the – was that the  
 21 practice in the second half of 2020 whereby  
 22 Ms. Hendrix would prepare a list of payments  
 23 that were due on behalf of Highland associates  
 24 and ask for approval?  
 25 A. Yes.

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1 WATERHOUSE - 10-19-21  
 2 Q. And I think you said that there was  
 3 a – a –  
 4 A. It was – I think I testified to  
 5 this earlier when we talked about procedures  
 6 and policy, you know, again, I want to be  
 7 informed of – of – of – of – of any  
 8 payments that are going out. I want to be made  
 9 aware of these payments, and that was just a  
 10 general policy, not just for 2020.  
 11 Q. Okay. So it went beyond 2020?  
 12 A. Yes.  
 13 Q. Is that right?  
 14 A. Yes.  
 15 Q. Okay. And the corporate accounting  
 16 group would prepare a calendar that would set  
 17 forth all of the payments that were anticipated  
 18 in the – in the three weeks ahead; is that  
 19 right?  
 20 A. I – like I testified earlier, we  
 21 had a corporate calendar that was set up, you  
 22 know, to – to provide reminders or, you know,  
 23 of anything of any nature, whether it is  
 24 payments or – or financial statements or, you  
 25 know, whatever it is, you know, to meet

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1 WATERHOUSE - 10-19-21  
 2 to offset any obligations that the advisors  
 3 owed to Highland as offset to the overpayments  
 4 on these agreements.  
 5 Q. Okay. Did you participate in any of  
 6 those conversations?  
 7 A. I did not.  
 8 Q. Okay. Do you know – do you recall  
 9 that the – at the end of November, the debtor  
 10 did notice to the advisors of their intent to  
 11 terminate the shared services agreements?  
 12 A. Like I testified earlier, there  
 13 was – the agreements weren't identical, from  
 14 what I recall, and there is one that had a  
 15 longer notice period, which I think had a  
 16 60-day notice period. I don't recall which one  
 17 that was, so not all of them were – notice  
 18 hadn't been given as of November 30th, for all  
 19 of the agreements.  
 20 Q. Upon the receipt of the – the  
 21 termination notices that you recall, do you  
 22 know if the advisors decided at that point not  
 23 to make any further payments of any kind to  
 24 Highland?  
 25 MR. RUKAVINA: Objection, form.

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1 WATERHOUSE - 10-19-21  
 2 deadlines.  
 3 I don't know how, as I testified  
 4 earlier, how much they were using that  
 5 calendar.  
 6 Q. Okay. But – but you did get notice  
 7 and a request to approve the payments that were  
 8 coming due on behalf of Highland's affiliates.  
 9 Do I have that right?  
 10 MS. DANDENEAU: Objection to form.  
 11 A. I mean, generally, yes. I mean, you  
 12 know, as we saw with these emails, generally, I  
 13 mean, did that encompass everything, no.  
 14 Q. Okay. Do you know why the  
 15 payment – do you know why there was no payment  
 16 made by NexPoint at the end of 2020?  
 17 A. Yes. There was – there was – we  
 18 talked about these agreements between the  
 19 advisors and Highland, the shared services and  
 20 the cost reimbursement agreement.  
 21 And in late 2020, there were  
 22 overpayments, large overpayments that had been  
 23 made over the years on these agreements, and it  
 24 was my understanding that the advisors were –  
 25 were talking with – like Jim Seery and others

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1 WATERHOUSE - 10-19-21  
 2 A. No. The advisors – the advisors  
 3 had stopped making payments prior to that  
 4 notice.  
 5 Q. Okay. And how do you know that the  
 6 advisors stopped making – making payments  
 7 prior to the notice?  
 8 A. I had – I had a conversation  
 9 with – with Jim Dondero.  
 10 Q. And did Mr. Dondero tell you that  
 11 the advisors would no longer make payments to  
 12 Highland?  
 13 MS. DEITSCH-PEREZ: Object to the  
 14 form.  
 15 A. Yes, he – he – again, he said  
 16 they – they – the advisors have overpaid on  
 17 these agreements, to not make any future  
 18 payments, and that there needs to be offsets,  
 19 and they're working on getting offsets to these  
 20 overpayment.  
 21 Q. Do you know if anybody ever  
 22 instructed Highland's employees to make the  
 23 payment that was due by NexPoint at the end of  
 24 the year?  
 25 A. Did anyone instruct Highland's



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1 WATERHOUSE - 10-19-21  
 2 employees to make that payment?  
 3 Q. Correct.  
 4 A. Anyone – not that I'm aware.  
 5 Q. Were any of Highland's employees  
 6 authorized to make the payments on behalf of  
 7 its affiliates – withdrawn.  
 8 Was any of Highland's employees  
 9 authorized to effectuate the payment on behalf  
 10 of NexPoint that was due at the end of the year  
 11 without getting approval from either you or  
 12 Mr. Dondero?  
 13 A. They had the -- they had the ability  
 14 to make the payment, but they didn't -- you  
 15 know, that -- that payment needed to be  
 16 approved.  
 17 Q. Okay. And it needed to be approved  
 18 by you or Mr. Dondero; is that right?  
 19 A. I mean, I'm not going to make the  
 20 unilateral decision.  
 21 Q. Is that a decision that you  
 22 understood had to be made by Mr. Dondero?  
 23 A. Yes. Sitting back in December of  
 24 2020, the -- that -- there was this off --  
 25 offset negotiation that -- that was happening,

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1 WATERHOUSE - 10-19-21  
 2 A. No. The two payments I recall were  
 3 NexPoint and HCRE.  
 4 Q. Okay. And those two payments --  
 5 thank you for the correction. And those two  
 6 payments were made because Mr. Dondero  
 7 authorized those payments to be made; correct?  
 8 A. Yes.  
 9 Q. And they hadn't been made before  
 10 that because Mr. Dondero had not authorized  
 11 them to be made?  
 12 MS. DEITSCH-PEREZ: Object to the  
 13 form.  
 14 A. Yes, because of these negotiations.  
 15 Q. Okay. Just a couple of more  
 16 questions.  
 17 Did anybody, to the best of your  
 18 knowledge, on behalf of HCMFA, ever tell the  
 19 SEC that HCMLP was responsible for the mistakes  
 20 that were made on the TerreStar valuation?  
 21 A. Did anyone from Highland on HCMFA's  
 22 behalf tell the SEC that Highland -- that  
 23 Highland was responsible for there -- I just  
 24 want to make sure --  
 25 Q. It was a little bit different, so

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1 WATERHOUSE - 10-19-21  
 2 so I mean, until those negotiations were  
 3 resolved, you know, there wasn't any  
 4 payments -- there weren't any payments.  
 5 Q. And -- and there were no payments  
 6 until the negotiations were resolved because  
 7 that was the directive that you received from  
 8 Mr. Dondero; correct?  
 9 A. I don't think he said -- I mean, I  
 10 think -- yeah, I mean -- I'm trying to recall  
 11 the conversation. It was -- you know, there  
 12 is -- there is these negotiations. There's --  
 13 there needs to be these offsets. They're  
 14 talking with the debtor. So, you know, until  
 15 this is resolved, right, I mean, depending on  
 16 how, whatever that resolution was, were we to  
 17 take any action.  
 18 Q. Okay. How about with respect to  
 19 HCMS, did HCMS have a term payment due at the  
 20 end of the year?  
 21 A. Again, I don't -- I don't recall.  
 22 Q. Okay. You discussed briefly two  
 23 payments that were made in January of 2021, one  
 24 on behalf of NexPoint, and one on behalf of  
 25 HCMS. Do I have that right?

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1 WATERHOUSE - 10-19-21  
 2 let me try again.  
 3 A. These are very long questions, John.  
 4 I'm not trying to be --  
 5 Q. That is good. Do you know whether  
 6 anybody -- do you know whether anybody on  
 7 behalf of HCMS -- HCMFA ever told the SEC that  
 8 Highland was the responsible party for the  
 9 TerreStar valuation error?  
 10 A. Not that I'm aware.  
 11 Q. Okay. Did anybody on behalf of  
 12 the -- on behalf of HCMFA ever tell the retail  
 13 board that Highland was responsible for the  
 14 TerreStar valuation error?  
 15 A. Not that I'm aware.  
 16 Q. Do you know if HCMFA made an  
 17 insurance claim with respect to the damages  
 18 that were incurred in relation to the TerreStar  
 19 valuation error?  
 20 A. Yes.  
 21 Q. And do you know why they made that  
 22 insurance claim?  
 23 A. Because there was an error. I  
 24 mean --  
 25 Q. Was the insured's claim made -- was

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1 WATERHOUSE - 10-19-21  
 2 the insurance claim made under HCMFA's policy?  
 3 A. Yes.  
 4 Q. Did HCMFA at any time prior to the  
 5 petition date – withdrawn.  
 6 You were asked a couple of questions  
 7 where – where you said that Mr. Dondero told  
 8 you that he was ascribing zero value to the  
 9 notes as part of a pot plan because he believed  
 10 that the notes were part of executive  
 11 compensation.  
 12 Do I have that right?  
 13 MS. DEITSCH-PEREZ: Object to the  
 14 form.  
 15 A. Yes.  
 16 Q. Okay. Have you ever heard that  
 17 before the time that Mr. Dondero told you that  
 18 in the conversation about the pot plan?  
 19 A. Had I heard that prior to my  
 20 conversation with Mr. Dondero?  
 21 Q. Yes.  
 22 A. No, I had not heard that prior.  
 23 Q. Okay. And that was in the context  
 24 of his formulation of the settlement proposal;  
 25 is that right?

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1 WATERHOUSE - 10-19-21  
 2 A. Yes.  
 3 Q. Okay. And was that late November or  
 4 early December of 2020?  
 5 A. It was, I would say, first or second  
 6 week of November.  
 7 Q. Okay. Do you recall whether –  
 8 whenever you had that discussion, whether  
 9 Mr. Dondero had already been fired by the  
 10 debtor?  
 11 A. Yes, I – I believe he was not an  
 12 employee of the debtor anymore at that time.  
 13 Q. And when you were discussing this  
 14 with Mr. Dondero and he said no more payments,  
 15 you were discussing the two shared services  
 16 agreements and employee reimbursement  
 17 agreements we testified – you testified about  
 18 before; is that correct?  
 19 MR. MORRIS: Objection to the form  
 20 of the question.  
 21 A. That is correct.  
 22 Q. And had your office or you – and we  
 23 will talk at a future deposition about the  
 24 administrative claim.  
 25 But had – by that time that you

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1 WATERHOUSE - 10-19-21  
 2 A. I mean, generally, yes. You know,  
 3 we were asked to provide asset values, right,  
 4 and he was having settlement discussions.  
 5 Again, I don't know who those went to  
 6 ultimately. I don't recall.  
 7 MR. MORRIS: I have no further  
 8 questions. Thank you very much for your  
 9 patience. I apologize for the late hour.  
 10 MS. DEITSCH-PEREZ: John, you stay  
 11 on about your email when –  
 12 MR. RUKAVINA: Hold on, I'm not  
 13 done.  
 14 MS. DEITSCH-PEREZ: Oh, okay. Davor  
 15 still has questions. Sorry. I was going  
 16 to say both John and Davor, could you stay  
 17 on afterwards just to talk about the  
 18 requests.  
 19 FURTHER EXAMINATION  
 20 BY MR. RUKAVINA:  
 21 Q. Mr. Waterhouse, you were just now  
 22 testifying about a discussion you had with  
 23 Mr. Dondero where he said something like no  
 24 more payments.  
 25 Do you remember that testimony?

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1 WATERHOUSE - 10-19-21  
 2 talked to Mr. Dondero, had your office or you  
 3 done any estimate of what the alleged  
 4 overpayments were?  
 5 MR. MORRIS: Objection to the form  
 6 of the question.  
 7 A. Yes, we had – there was a – there  
 8 was a detailed analysis that was put together  
 9 by David Klos at the time.  
 10 Q. And do you recall just generally  
 11 what the total amount for both advisors of the  
 12 overpayments was?  
 13 A. It was in excess of \$10 million.  
 14 Q. Was it in excess of \$14 million?  
 15 MR. MORRIS: Objection to the form  
 16 of the question.  
 17 A. I – I remember it was an  
 18 eight-figure number. I don't remember  
 19 specifically.  
 20 Q. Okay. And did you convey that  
 21 number to Mr. Dondero when you had that  
 22 conversation?  
 23 A. Yes.  
 24 Q. What was his reaction?  
 25 A. I mean, he wasn't happy.

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 2 Q. Is it fair to say he was upset?  
 3 A. Yes.  
 4 Q. Did Mr. Dondero ever expressly tell  
 5 you to not have NexPoint make the required  
 6 December 31, 2020, payment?  
 7 A. Yes, I recall him saying don't make  
 8 the payment because it was being negotiated, as  
 9 I discussed with Mr. Morris, this offset  
 10 concept. So there were obligations due by the  
 11 advisors to Highland, they should be offset  
 12 that – you know, those obligations should be  
 13 offset by this – by this overpayment.  
 14 Q. And when did he tell you that?  
 15 A. I would say – I would say around –  
 16 probably December – December-ish.  
 17 Q. Early December, late December?  
 18 A. I don't recall with as much  
 19 specificity as – as – as – as stopping the  
 20 shared services payments, because we had  
 21 actually made one shared services payment in  
 22 November. So that is why I need to remember  
 23 that one more clearly. I don't remember where  
 24 exactly in December that conversation occurred.  
 25 Q. Did Mr. Dondero expressly use the

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 2 A. I did not.  
 3 Q. So sitting here today, you – you  
 4 remember distinctly that Dondero in December of  
 5 2020 expressly told you not to have NexPoint  
 6 make that payment?  
 7 MR. MORRIS: Objection, asked and  
 8 answered three times.  
 9 A. Yes.  
 10 Q. Can you say categorically it wasn't  
 11 just some general discussion where he told you  
 12 not to make payments?  
 13 MR. MORRIS: Objection, asked and  
 14 answer four times.  
 15 MR. HORN: Four times now. Go for  
 16 five.  
 17 A. Yes.  
 18 Q. Did you tell Mr. Seery that?  
 19 A. I don't believe I did. I don't  
 20 recall.  
 21 Q. And was this an in-person discussion  
 22 or telephone or email? Do you remember?  
 23 A. This was a phone – a phone  
 24 conversation.  
 25 Q. Okay. Would you have a record of –

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 2 word "NexPoint" when he was saying don't make  
 3 these payments?  
 4 MR. MORRIS: Objection to the form  
 5 of the question, asked and answered.  
 6 A. Yeah, we were – we were discussing  
 7 advisor obligations. So it was – you know, it  
 8 was just obligations from the advisors.  
 9 And – and he specifically talked  
 10 about the NexPoint payment as well.  
 11 Q. Okay. And it is your testimony that  
 12 he expressly told you not to make that NexPoint  
 13 December 31 payment?  
 14 MR. MORRIS: Objection, asked and  
 15 answered twice.  
 16 A. Yes, he – he did, during that  
 17 conversation.  
 18 Q. And did you ever follow up with him  
 19 after that about whether NexPoint should or  
 20 shouldn't make that payment?  
 21 A. I did not.  
 22 Q. Did you ever, on or about  
 23 December 31, 2020, remind him and say, hey,  
 24 this payment is due, what shall I – what  
 25 should I do?

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 2 on your cell phone of when that conversation  
 3 might have taken place?  
 4 I'm sorry, strike that.  
 5 Was that by cell phone?  
 6 A. I believe – yes, because we – I  
 7 was at home. I mean, I don't have a landline.  
 8 All I have is my cell phone.  
 9 Q. Do you know whether your cell phone  
 10 still has records of conversations from  
 11 December 2020 on it?  
 12 A. My call log doesn't go back that  
 13 far.  
 14 Q. Okay. Thank you.  
 15 MR. RUKAVINA: I will pass the  
 16 witness.  
 17 MS. DEITSCH-PEREZ: Just a couple  
 18 quick questions.  
 19 FURTHER EXAMINATION  
 20 BY MS. DEITSCH-PEREZ:  
 21 Q. With respect to HCRE and HCMS, am I  
 22 correct there was – there was no direction not  
 23 to pay those loan payments?  
 24 MR. MORRIS: Objection to the form  
 25 of the question.

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2 A. Yes, I don't recall having

3 conversations about, you know, those – those

4 entities.

5 Q. And, in fact, what was the tone that

6 Mr. Dondero had when he talked to you about the

7 fact that HCRE and HCMS payments hadn't been

8 made when he found out that they hadn't been

9 paid?

10 MS. DANDENEAU: Objection to form.

11 MR. MORRIS: Objection to form.

12 Q. What was the tone he took with you?

13 A. Oh, it was – it was – it was – it

14 was very negative. I mean, I think he cursed

15 at me and he doesn't usually curse.

16 Q. Okay. And in your mind, is that

17 consistent with the fact that he was surprised

18 that those payments hadn't been made?

19 MR. MORRIS: Objection to the form

20 of the question.

21 A. Yes.

22 Q. Okay. Thank you.

23 MR. MORRIS: I have nothing further.

24 Thank you so much, Mr. Waterhouse.

25 MR. HORN: I have no questions.

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2 C E R T I F I C A T E

3

4 I, SUSAN S. KLINGER, a certified shorthand

5 reporter within and for the State of Texas, do

6 hereby certify:

7 That FRANK WATERHOUSE, the witness whose

8 deposition is hereinbefore set forth, was duly

9 sworn by me and that such deposition is a true

10 record of the testimony given by such witness.

11 I further certify that I am not related to

12 any of the parties to this action by blood or

13 marriage; and that I am in no way interested in

14 the outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set my

16 hand this 19th of October, 2021.

17

18 \_\_\_\_\_

19 Susan S. Klinger, RMR-CRR, CSR

20 Texas CSR# 6531

21

22

23

24

25

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2 Thank you, Mr. Waterhouse. We appreciate

3 your time. I am logging off the discussion

4 and I will talk to y'all tomorrow.

5 MR. MORRIS: Super.

6 VIDEOGRAPHER: If there are no

7 further questions, this ends the

8 deposition – excuse me. This ends the

9 deposition, and we are going off the record

10 at 7:30 p.m.

11 (Deposition concluded at 7:30 p.m.)

12

13

14 \_\_\_\_\_

15 FRANK WATERHOUSE

16 Subscribed and sworn to before me

17 this day of 2021.

18

19 \_\_\_\_\_

20

21

22

23

24

25

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2 NAME OF CASE: In re: Highland Capital

3 DATE OF DEPOSITION: October 19, 2021

4 NAME OF WITNESS: Frank Waterhouse

5 Reason Codes:

6 1. To clarify the record.

7 2. To conform to the facts.

8 3. To correct transcription errors.

9 Page \_\_\_ Line \_\_\_ Reason \_\_\_\_\_

10 From \_\_\_\_\_ to \_\_\_\_\_

11 Page \_\_\_ Line \_\_\_ Reason \_\_\_\_\_

12 From \_\_\_\_\_ to \_\_\_\_\_

13 Page \_\_\_ Line \_\_\_ Reason \_\_\_\_\_

14 From \_\_\_\_\_ to \_\_\_\_\_

15 Page \_\_\_ Line \_\_\_ Reason \_\_\_\_\_

16 From \_\_\_\_\_ to \_\_\_\_\_

17 Page \_\_\_ Line \_\_\_ Reason \_\_\_\_\_

18 From \_\_\_\_\_ to \_\_\_\_\_

19 Page \_\_\_ Line \_\_\_ Reason \_\_\_\_\_

20 From \_\_\_\_\_ to \_\_\_\_\_

21 Page \_\_\_ Line \_\_\_ Reason \_\_\_\_\_

22 From \_\_\_\_\_ to \_\_\_\_\_

23 Page \_\_\_ Line \_\_\_ Reason \_\_\_\_\_

24 From \_\_\_\_\_ to \_\_\_\_\_

25

<p><b>\$</b></p> <p><b>\$1,406,000</b> 343:10</p> <p><b>\$1,406,112</b> 343:13</p> <p><b>\$1.04</b> 109:15</p> <p><b>\$1.4</b> 344:5 345:11 350:7 351:22</p> <p><b>\$1.5</b> 223:17</p> <p><b>\$1.7</b> 92:22</p> <p><b>\$10</b> 389:13</p> <p><b>\$10.5</b> 308:16</p> <p><b>\$12.7</b> 311:2 317:10</p> <p><b>\$13</b> 310:23</p> <p><b>\$14</b> 389:14</p> <p><b>\$150</b> 239:10</p> <p><b>\$173,398,000</b> 107:7</p> <p><b>\$2.4</b> 140:14 141:9,18 270:20 271:7,16 272:8 283:18 315:13</p> <p><b>\$23</b> 220:24</p> <p><b>\$24</b> 178:19</p> <p><b>\$24.5</b> 309:25</p> <p><b>\$30</b> 161:25 220:13,20 223:7 224:2 334:7,19 336:13,23 337:25 339:4 340:10 341:23</p> <p><b>\$30.7</b> 216:17</p> <p><b>\$325,000</b> 331:14 332:16,24</p> <p><b>\$400</b> 239:24</p> <p><b>\$410</b> 238:9 239:12</p> <p><b>\$5</b> 142:19 270:20 271:6 272:7 283:18 315:13</p> <p><b>\$5.3</b> 119:23 310:17</p> <p><b>\$7</b> 217:16,19 221:7 277:11,20</p> <p><b>\$7.2</b> 302:22</p> <p><b>\$7.4</b> 131:13 132:8 138:12 143:12 144:6, 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280:1 281:1 282:1 283:1 284:1 285:1 286:1 287:1 288:1 289:1 290:1 291:1 292:1 293:1 294:1 295:1 296:1</p>	<p>297:1 298:1 299:1 300:1 301:1 302:1 303:1 304:1 305:1 306:1 307:1 308:1 309:1 310:1 311:1 312:1 313:1 314:1 315:1 316:1 317:1 318:1 319:1 320:1 321:1 322:1 323:1 324:1 325:1 326:1 327:1 328:1 329:1 330:1 331:1 332:1 333:1 334:1 335:1 336:1 337:1 338:1 339:1 340:1 341:1 342:1 343:1 344:1 345:1 346:1 347:1 348:1 349:1 350:1 351:1 352:1 353:1 354:1 355:1 356:1 357:1 358:1 359:1 360:1 361:1 362:1 363:1 364:1 365:1 366:1 367:1 368:1 369:1 370:1 371:1 372:1 373:1 374:1 375:1 376:1 377:1 378:1 379:1 380:1 381:1 382:1 383:1 384:1 385:1 386:1 387:1 388:1 389:1 390:1 391:1 392:1 393:1 394:1 395:1</p> <p><b>10.5</b> 308:22</p> <p><b>100</b> 108:23 298:15</p> <p><b>10010</b> 4:21</p> <p><b>10017</b> 3:10</p> <p><b>10:08</b> 36:15,16</p> <p><b>10:11</b> 36:16,18</p> <p><b>11/25</b> 6:7</p> <p><b>11/30</b> 332:24</p> <p><b>11:02</b> 72:25 73:2,5,6</p> <p><b>11:15</b> 73:3 342:14</p> 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## **EXHIBIT 15**

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

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

**DECLARATION OF DENNIS C. SAUTER, JR.**

I, Dennis C. Sauter, Jr., hereby swear under oath and penalty of perjury pursuant to the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. My name is Dennis C. Sauter, Jr. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration. I have personal knowledge of the facts stated in this Declaration, or such facts are known to me from my review of the books and records of Highland Capital Management Fund Advisors, L.P. ("HCMFA").

2. I am an attorney licensed to practice law in the State of Texas and have been such since 2001.

**EXHIBIT "A"**

3. While I provided limited legal services to Highland Capital Management, L.P. (the “Debtor”) and its affiliated entities as outside counsel before I became in-house counsel, those services were limited to real estate transactions having nothing to do with the facts discussed in this Declaration.

4. HCMFA is a registered advisor under the Investment Advisors Act of 1940. CITE. As such, HCMFA advises various independent funds, which, in turn, are investment vehicles for a large number of investors.

5. HCMFA has always had very few employees. During 2019, for example, HCMFA had only 7 to 9 employees.

6. Instead, most of the services needed by HCMFA to transact its business were provided by the Debtor pursuant to that certain *Second Amended and Restated Shared Services Agreement* dated February 8, 2013 (the “Shared Services Agreement”), a true and correct copy of which is attached hereto as Exhibit 1.

7. This was standard business practices for the Debtor and various other affiliated companies, including other advisers within the Debtor’s and its affiliates “complex” of businesses: the Debtor would employ most of the employees and then share those employees with HCMFA and other “complex” entities in exchange for payments by HCMFA and such other entities.

8. Thus, under the Shared Services Agreement, employees of the Debtor (many of whom were highly trained and specialized) provided many of the key services to HCMFA on an as-needed basis. These services included legal, accounting, regulatory, compliance, IT, and tax services, among others. Additionally, under the Shared Services Agreement the Debtor provided critical electronic infrastructure to HCMFA and other “complex” entities, such that the books and records, and e-mail communications, of HCMFA were actually stored on the Debtor’s server.

9. These facts are very important to the issues I will discuss below.

10. On January 22, 2021, the Debtor filed its *Complaint for (i) Breach of Contract and (ii) Turnover of Property of the Debtor's Estate* (the "Complaint") against HCMFA, thereby initiating this Adversary Proceeding.

11. The Complaint concerns two promissory notes each dated May 2, 2019 (the "Notes") that the Debtor seeks a judgment against HCMFA for: (i) a note for \$5 million; and (ii) a note for \$2.4 million.

12. On March 1, 2021, HCMFA filed its *Defendant's Original Answer* (the "Answer").

13. At the time that the Debtor filed the Complaint, I promptly undertook an internal review of the background facts concerning the Notes. I had no knowledge of them since I had not been employed by HCMFA, and the few employees of HCMFA had no knowledge of the Notes. I also discussed the Notes with James Dondero, formerly the CEO of the Debtor, and Mr. Dondero could not recall the genesis of the Notes. My review of the limited books and records of HCMFA that were not in the possession of the Debtor did not reveal any background facts regarding the Notes or the existence of the Notes.

14. Normally, I would have discussed the Notes with employees of the Debtor who also provided services to HCMFA pursuant to the Shared Services Agreement in order to assess what defenses or affirmative defenses to the Complaint existed. However, in this instance I was precluded from doing so.

15. First, attached hereto as Exhibit 2 is a true and correct copy of an e-mail exchange between me and Mr. James Seery dated September 17, 2020. Mr. Seery was and remains the Chief Executive Officer of the Debtor. As stated in Exhibit 2, Mr. Seery was informing me that Debtor employees had been instructed not to discuss with me anything that is "inimical" to the interests of the Debtor, and that they would be terminated if they did so. This e-mail communication comports with other communications between myself and Mr. Seery and/or Debtor's counsel,

where I was cautioned not to discuss with Debtor employees matters that may be adverse to the Debtor.

16. Second, by the time of the filing of the Complaint, the Court had entered a preliminary injunction against Mr. Dondero, a true and correct copy of which is attached hereto as Exhibit 3. That injunction prohibited Mr. Dondero from “directly or indirectly . . . communicating with any of the Debtor’s employees, except as it specifically relates to shared services currently provided.” As the information concerning the Notes was background information and not related to “services currently provided,” I was concerned that, if I discussed the Notes with the Debtor’s employees, the Debtor would argue that either Mr. Dondero or I violated the Court’s injunction.

17. In sum, after the Complaint was filed, no one at HCMFA knew anything about the Notes, and I was precluded from contacting the people that would have known something about the notes, *i.e.* the Debtor’s employees, to discuss what they may have known. I also had very limited access to HCMFA books and records and, even if I had had full access, I would not have known what relevant books and records to search for in the many millions of files without first obtaining a generalized background of the facts regarding the Notes from Debtor employees.

18. I then worked with outside counsel at Munsch Hardt Kopf & Harr, P.C. to review the Complaint and prepare and file the Answer. That original Answer did not contain any affirmative defenses because, as explained above, no one at HCMFA knew of any facts that might give rise to an affirmative defense.

19. The situation changed by mid-April, 2021. As of late February, 2021, the Debtor terminated the Shared Services Agreement and terminated most of its former employees. Many of those employees then formed their own company, Skyview Group, which then contracted with HCMFA (and others) to continue providing essentially the same services that they had previously provided under the Shared Services Agreement. Additionally, the Debtor provided access to

HCMFA of much of its books and records (although not all). Thus, as of March, 2021, I was able to communicate with most former Debtor employees and to access the books and records of HCMFA without fear of violating any court order.

20. March, 2021, was exceedingly busy, to say the least. With the termination of the Shared Services Agreement, HCMFA, other entities that I am general counsel to, and I were preoccupied with transitioning the services that the Debtor had been providing for more than a decade to a new entity, using new infrastructure, new offices, new networks, etc., all for the primary goal of ensuring a smooth and uninterrupted continuity of business and services provided by HCMFA and others to third parties.

21. By mid-April, 2021, the situation had calmed down to the point that I was able to discuss the Notes with former employees, most importantly Frank Waterhouse (“Waterhouse”) and Will Mabry (“Mabry”). Mabry in particular was able to provide me internal documents and memorandums that I had not previously known about or had access to that helped with the factual background of the Notes.

22. From these discussions and documents, I have been able to understand the factual background concerning the Notes, ultimately concluding that the Notes were signed by mistake by Waterhouse without authority from HCMFA and have no consideration and were never intended to be debt instruments of HCMFA.

23. My investigation has revealed the following.

24. One of the funds that HCMFA advises is Highland Global Allocation Fund (“GAF”). In March, 2018, GAF sold equity interests it held in TerreStar. As part of this, it was necessary to calculate the “net asset value” (“NAV”) of these securities and of GAF assets. HCMFA was responsible for advising on the NAV. In turn, pursuant to the Shared Services Agreement and in accordance with applicable compliance and operating procedures, the Debtor



was responsible to HCMFA to calculate the NAV, and the Debtor had several employees charged with these and similar calculations as part of the Debtor's routine business services and as part of what the Debtor regularly provided to HCMFA and affiliated companies.

25. The Debtor made a mistake in calculating the NAV (the "NAV Error"). The NAV Error was discovered in early 2019 as GAF was being converted from an open-ended fund to a closed-ended fund. The Securities and Exchange Commission opened an investigation, and various employees and representatives of the Debtor, HCMFA, and GAF worked with the SEC to correct the error and to compensate GAF and the various investors in GAF harmed by the NAV Error.

26. Ultimately, and working with the SEC, the Debtor determined that the losses from the NAV Error to GAF and its shareholders amounted to \$7.5 million: (i) \$6.1 million for the NAV Error itself, as well as rebating related advisor fees and processing costs; and (ii) \$1.4 million of losses to the shareholders of GAF.

27. HCMFA accepted responsibility for the NAV Error and paid out \$5,186,496 on February 15, 2019 and \$2,398,842 on May 21, 2019. I am not sure of the flow of funds, whether the funds flowed through HCMFA or were paid by the Debtor on behalf of HCMFA, and discovery will likely clear that up. Either way, however, the payments were of HCMFA funds and on behalf of HCMFA.

28. In turn, the Debtor accepted responsibility to HCMFA for having caused the NAV Error, and the Debtor ultimately, whether through insurance or its own funds, compensated HCMFA for the above payments.

29. Returning to the Notes, Waterhouse was the Chief Financial Officer of both the Debtor and HCMFA during the above events and at the time he signed the Notes.

30. It appears clear that Waterhouse made a mistake in preparing and signing the Notes. First, , the Notes correspond very closely to the ultimate \$5,186,496 and \$2,398,842 payments. Second, it appears that Waterhouse assumed, incorrectly, that the funds being paid by the Debtor were a loan to HCMFA, instead of payments as compensation and restitution to HCMFA for the Debtor having caused the NAV Error. Third, it therefore appears that Waterhouse prepared the Notes for some internal accounting or other purpose, but without there being actual consideration for the Notes and without any intention on the part of the Debtor and HCMFA that there be Notes or that there be a loan transaction.


31. I also note that, as of May, 2019, HCMFA had executed other demand notes payable to the Debtor. On April 15, 2019, the Debtor executed that certain *Acknowledgement from HCMLP*, a true and correct copy of which is attached hereto as Exhibit 4. By the same, the Debtor agreed not to demand payment of these notes prior to May 31, 2021, because HCMFA believed that it would not be able to repay those notes prior to that time. It is illogical that, in light of the same, the Debtor would shortly thereafter lend an additional \$7.4 million to HCMFA. Rather, as my investigation has shown, the Debtor did not lend the funds to HCMFA but instead paid the funds, directly or indirectly, to compensate HCMFA for the NAV Error, which was the Debtor's error and therefore its obligation to correct and compensate for.

32. Therefore, in light of having learned of these facts in mid to late-April, 2019, HCMFA now believes that it has affirmative defenses to the Notes in the nature of mutual mistake, void for lack of consideration, and no proper authority of Waterhouse to sign the Notes.

33. Neither I, nor HCMFA, nor any of HCMFA's agents, have been less than diligent in investigating the Notes and the Complaint.

34. HCMFA respectfully requests that it be granted leave to assert these affirmative defenses in the Adversary Proceeding.

Signed: May 21, 2021

  
DENNIS C. SAUTER, JR.

**SECOND AMENDED AND RESTATED  
SHARED SERVICES AGREEMENT**

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (this “*Agreement*”) is entered into to be effective as of 8<sup>th</sup> day of February, 2013 (the “*Effective Date*”) by and among Highland Capital Management, L.P., a Delaware limited partnership (“*HCMLP*”), and Highland Capital Management Fund Advisors, L.P., formerly known as Pyxis Capital, L.P., a Delaware limited partnership (“*HCMFA*”), and any affiliate of HCMFA that becomes a party hereto. Each of the signatories hereto is individually a “*Party*” and collectively the “*Parties*”.

**RECITALS**

A. During the Term, HCMLP will provide to HCMFA certain services as more fully described herein and the Parties desire to allocate the costs incurred for such services and assets among them in accordance with the terms and conditions in this Agreement.

**AGREEMENT**

In consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the Parties agree, intending to be legally bound, as follows:

**ARTICLE I  
DEFINITIONS**

“*Actual Cost*” means, with respect to any period hereunder, one hundred percent (100%) of the actual costs and expenses caused by, incurred or otherwise arising from or relating to (i) the Shared Services and (ii) the Shared Assets, in each case during such period.

“*Affiliate*” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. The term “*control*” (including, with correlative meanings, the terms “*controlled by*” and “*under common control with*”) means the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

“*Agreement*” has the meaning set forth in the preamble.

“*Allocation Percentage*” has the meaning set forth in Section 4.01.

“*Applicable Margin*” shall mean an additional amount equal to 5% of all costs allocated by Service Provider to the other parties hereto under Article IV; provided that the parties may agree on a different margin percentage as to any item or items to the extent the above margin percentage, together with the allocated cost of such item or service, would not reflect an arm’s length value of the particular service or item allocated.

“*Change*” has the meaning set forth in Section 2.02(a).

“*Change Request*” has the meaning set forth in Section 2.02(b).

“*Code*” means the Internal Revenue Code of 1986, as amended, and the related regulations and published interpretations.

“**Effective Date**” has the meaning set forth in the preamble.

“**Governmental Entity**” means any government or any regulatory agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“**Liabilities**” means any cost, liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any Person of any nature (whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

“**Loss**” means any cost, damage, disbursement, expense, liability, loss, obligation, penalty or settlement, including interest or other carrying costs, legal, accounting and other professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims and amounts paid in settlement, that may be imposed on or otherwise incurred or suffered by the referenced Person; provided, however, that the term “**Loss**” will not be deemed to include any special, exemplary or punitive damages, except to the extent such damages are incurred as a result of third party claims.

“**New Shared Service**” has the meaning set forth in Section 2.03.

“**Party**” or “**Parties**” has the meaning set forth in the preamble.

“**Person**” means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

“**Quarterly Report**” has the meaning set forth in Section 5.01.

“**Recipient**” means HCMFA and any of HCMFA’s direct or indirect Subsidiaries or managed funds or accounts in their capacity as a recipient of the Shared Services and/or Shared Assets.

“**Service Provider**” means any of HCMLP and its direct or indirect Subsidiaries in its capacity as a provider of Shared Services or Shared Assets.

“**Service Standards**” has the meaning set forth in Section 6.01.

“**Shared Assets**” shall have the meaning set forth in Section 3.02.

“**Shared Services**” shall have the meaning set forth in Section 2.01.

“**Subsidiary**” means, with respect to any Person, any Person in which such Person has a direct or indirect equity ownership interest in excess of 50%.

“**Tax**” or “**Taxes**” means: (i) all state and local sales, use, value-added, gross receipts, foreign, privilege, utility, infrastructure maintenance, property, federal excise and similar levies, duties and other similar tax-like charges lawfully levied by a duly constituted taxing authority against or upon the Shared Services and the Shared Assets; and (ii) tax-related surcharges or fees that are related to the Shared Services and the Shared Assets identified and authorized by applicable tariffs.

“**Term**” has the meaning set forth in Section 7.01.

ARTICLE II  
SHARED SERVICES

Section 2.01 Services. During the Term, Service Provider will provide Recipient with Shared Services, including without limitation, all of the (i) finance and accounting services, (ii) human resources services, (iii) marketing services, (iv) legal services, (v) corporate services, (vi) information technology services, and (vii) operations services; each as requested by HCMFA and as described more fully on Annex A attached hereto, the “*Shared Services*”), it being understood that personnel providing Shared Services may be deemed to be employees of HCMFA to the extent necessary for purposes of the Investment Advisers Act of 1940, as amended.

Section 2.02 Changes to the Shared Services.

(a) During the Term, the Parties may agree to modify the terms and conditions of a Service Provider’s performance of any Shared Service in order to reflect new procedures, processes or other methods of providing such Shared Service, including modifying the applicable fees for such Shared Service to reflect the then current fair market value of such service (a “*Change*”). The Parties will negotiate in good faith the terms upon which a Service Provider would be willing to provide such New Shared Service to Recipient.

(b) The Party requesting a Change will deliver a description of the Change requested (a “*Change Request*”) and no Party receiving a Change Request may unreasonably withhold, condition or delay its consent to the proposed Change.

(c) Notwithstanding any provision of this Agreement to the contrary, a Service Provider may make: (i) Changes to the process of performing a particular Shared Service that do not adversely affect the benefits to Recipient of Service Provider’s provision or quality of such Shared Service in any material respect or increase Recipient’s cost for such Shared Service; (ii) emergency Changes on a temporary and short-term basis; and/or (iii) Changes to a particular Shared Service in order to comply with applicable law or regulatory requirements, in each case without obtaining the prior consent of Recipient. A Service Provider will notify Recipient in writing of any such Change as follows: in the case of clauses (i) and (iii) above, prior to the implementation of such Change, and, in the case of clause (ii) above, as soon as reasonably practicable thereafter.

Section 2.03 New Shared Services. The Parties may, from time to time during the Term of this Agreement, negotiate in good faith for Shared Services not otherwise specifically listed in Section 2.01 (a “*New Shared Service*”). Any agreement between the Parties on the terms for a New Shared Service must be in accordance with the provisions of Article IV and Article V hereof, will be deemed to be an amendment to this Agreement and such New Shared Service will then be a “*Shared Service*” for all purposes of this Agreement.

Section 2.04 Subcontractors. Nothing in this Agreement will prevent Service Provider from, with the consent of Recipient, using subcontractors, hired with due care, to perform all or any part of a Shared Service hereunder. A Service Provider will remain fully responsible for the performance of its obligations under this Agreement in accordance with its terms, including any obligations it performs through subcontractors, and a Service Provider will be solely responsible for payments due to its subcontractors.

ARTICLE III  
SHARED ASSETS

Section 3.01 Shared IP Rights. Each Service Provider hereby grants to Recipient a non-exclusive right and license to use the intellectual property and other rights granted or licensed, directly or indirectly, to such Service Provider (the “*Shared IP Rights*”) pursuant to third party intellectual property Agreements (“*Third Party IP Agreements*”), provided that the rights granted to Recipient hereunder are subject to the terms and conditions of the applicable Third Party IP Agreement, and that such rights shall terminate, as applicable, upon the expiration or termination of the applicable Third Party IP Agreement. Recipient shall be licensed to use the Shared IP Rights only for so long as it remains an Affiliate of HCMLP. In consideration of the foregoing licenses, Recipient agrees to take such further reasonable actions as a Service Provider deems to be necessary or desirable to comply with its obligations under the Third Party IP Agreements.

Section 3.02 Other Shared Assets. Subject to Section 3.01, each Service Provider hereby grants Recipient the right, license or permission, as applicable, to use and access the benefits under the agreements, contracts and licenses that such Service Provider will purchase, acquire, become a party or beneficiary to or license on behalf of Recipient (the “*Future Shared Assets*” and collectively with the Shared IP Rights, the “*Shared Assets*”).

ARTICLE IV  
COST ALLOCATION

Section 4.01 Actual Cost Allocation Formula. The Actual Cost of any item relating to any Shared Services or Shared Assets shall be allocated based on the Allocation Percentage. For purposes of this Agreement, “*Allocation Percentage*” means:

- (a) To the extent 100% of such item is demonstrably attributable to HCMFA, 100% of the Actual Cost of such item shall be allocated to HCMFA as agreed by HCMFA;
- (b) To the extent a specific percentage of use of such item can be determined (e.g., 70% for HCMLP and 30% for HCMFA), that specific percentage of the Actual Cost of such item will be allocated to HCMLP or HCMFA, as applicable and as agreed by HCMFA; and
- (c) All other portions of the Actual Cost of any item that cannot be allocated pursuant to clause (a) or (b) above shall be allocated between HCMLP and HCMFA in such proportion as is agreed in good faith between the parties.

Section 4.02 Non-Cash Cost Allocation. The actual, fully burdened cost of any item relating to any Shared Services or Shared Assets that does not result in a direct, out of pocket cash expense may be allocated to HCMLP and HCMFA for financial statement purposes only, as agreed by HCMFA, without any corresponding cash reimbursement required, in accordance with generally accepted accounting principles, based on the Allocation Percentage principles described in Section 4.01 hereof.

ARTICLE V  
PAYMENT OF COST AND REVENUE SHARE; TAXES

Section 5.01 Quarterly Statements. Within thirty (30) days following the end of each calendar quarter during the Term (or at such time as may be otherwise agreed by the parties), each Service Provider shall furnish the other Parties hereto with a written statement with respect to the Actual Cost paid by it in respect of Shared Services and Shared Assets provided by it, in each case, during such

period, setting forth (i) the cost allocation in accordance with Article IV hereof together with the Applicable Margin on such allocated amounts, and (ii) any amounts paid pursuant to Section 5.02 hereof, together with such other data and information necessary to complete the items described in Section 5.03 hereof (hereinafter referred to as the “*Quarterly Report*”).

Section 5.02 Settlement Payments. At any time during the Term, any Party may make payment of the amounts that are allocable to such Party together with the Applicable Margin related thereto, regardless of whether an invoice pursuant to Section 5.03 hereof has been issued with respect to such amounts.

Section 5.03 Determination and Payment of Cost and Revenue Share.

(a) Within ten (10) days of the submission of the Quarterly Report described in Section 5.02 hereof (or at such other time as may be agreed by the parties), the Parties shall (i) agree on the cost share of each of the Parties and Applicable Margin as calculated pursuant to the provisions of this Agreement; and (ii) prepare and issue invoices for the cost share and Applicable Margin payments that are payable by any of the Parties.

(b) Within ten (10) days of preparation of the agreement and the issuance of the invoice described in Section 5.03(a) (or at such other time as may be agreed by the parties), the Parties shall promptly make payment of the amounts that are set forth on such cost allocation invoice. Notwithstanding anything in this Agreement to the contrary, provision of the Shared Services shall commence from the Effective Date, but no fees shall be payable from Recipient or otherwise accrue with respect to such services provided during the month of December 2011.

Section 5.04 Taxes.

(a) Recipient is responsible for and will pay all Taxes applicable to the Shared Services and the Shared Assets provided to Recipient, provided, that such payments by Recipient to Service Provider will be made in the most tax-efficient manner and provided further, that Service Provider will not be subject to any liability for Taxes applicable to the Shared Services and the Shared Assets as a result of such payment by Recipient. Service Provider will collect such Tax from Recipient in the same manner it collects such Taxes from other customers in the ordinary course of Service Provider’s business, but in no event prior to the time it invoices Recipient for the Shared Services and Shared Assets, costs for which such Taxes are levied. Recipient may provide Service Provider with a certificate evidencing its exemption from payment of or liability for such Taxes.

(b) Service Provider will reimburse Recipient for any Taxes collected from Recipient and refunded to Service Provider. In the event a Tax is assessed against Service Provider that is solely the responsibility of Recipient and Recipient desires to protest such assessment, Recipient will submit to Service Provider a statement of the issues and arguments requesting that Service Provider grant Recipient the authority to prosecute the protest in Service Provider’s name. Service Provider’s authorization will not be unreasonably withheld. Recipient will finance, manage, control and determine the strategy for such protest while keeping Service Provider reasonably informed of the proceedings. However, the authorization will be periodically reviewed by Service Provider to determine any adverse impact on Service Provider, and Service Provider will have the right to reasonably withdraw such authority at any time. Upon notice by Service Provider that it is so withdrawing such authority, Recipient will expeditiously terminate all proceedings. Any adverse consequences suffered by Recipient as a result of the withdrawal will be submitted to arbitration pursuant to Section 9.14. Any contest for Taxes brought by Recipient may not result in any lien attaching to any property or rights of Service Provider or otherwise jeopardize Service Provider’s interests or rights in any of its property. Recipient agrees to



indemnify Service Provider for all Losses that Service Provider incurs as a result of any such contest by Recipient.

(c) The provisions of this Section 5.04 will govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other Article of this Agreement to the contrary.

ARTICLE VI  
SERVICE PROVIDER RESPONSIBILITIES

Section 6.01 Service Provider General Obligations. Service Provider will provide the Shared Services and the Shared Assets to Recipient on a non-discriminatory basis and will provide the Shared Services and the Shared Assets in the same manner as if it were providing such services and assets on its own account (the “*Service Standards*”). Service Provider will conduct its duties hereunder in a lawful manner in compliance with applicable laws, statutes, rules and regulations and in accordance with the Service Standards, including, for avoidance of doubt, laws and regulations relating to privacy of customer information.

Section 6.02 Books and Records; Access to Information. Service Provider will keep and maintain books and records on behalf of Recipient in accordance with past practices and internal control procedures. Recipient will have the right, at any time and from time to time upon reasonable prior notice to Service Provider, to inspect and copy (at its expense) during normal business hours at the offices of Service Provider the books and records relating to the Shared Services and Shared Assets, with respect to Service Provider’s performance of its obligations hereunder. This inspection right will include the ability of Recipient’s financial auditors to review such books and records in the ordinary course of performing standard financial auditing services for Recipient (but subject to Service Provider imposing reasonable access restrictions to Service Provider’s and its Affiliates’ proprietary information and such financial auditors executing appropriate confidentiality agreements reasonably acceptable to Service Provider). Service Provider will promptly respond to any reasonable requests for information or access. For the avoidance of doubt, all books and records kept and maintained by Service Provider on behalf of Recipient shall be the property of Recipient, and Service Provider will surrender promptly to Recipient any of such books or records upon Recipient’s request (provided that Service Provider may retain a copy of such books or records) and shall make all such books and records available for inspection and use by the Securities and Exchange Commission or any person retained by Recipient at all reasonable times. Such records shall be maintained by Service Provider for the periods and in the places required by laws and regulations applicable to Recipient.

Section 6.03 Return of Property and Equipment. Upon expiration or termination of this Agreement, Service Provider will be obligated to return to Recipient, as soon as is reasonably practicable, any equipment or other property or materials of Recipient that is in Service Provider’s control or possession.

ARTICLE VII  
TERM AND TERMINATION

Section 7.01 Term. The term of this Agreement will commence as of the Effective Date and will continue in full force and effect until the first anniversary of the Effective Date (the “*Term*”), unless terminated earlier in accordance with Section 9.02. The Term shall automatically renew for successive one year periods unless sooner terminated under Section 7.02.

Section 7.02 Termination. Either Party may terminate this Agreement, with or without cause, upon at least 60 days advance written notice at any time prior to the expiration of the Term.

ARTICLE VIII  
LIMITED WARRANTY

Section 8.01 Limited Warranty. Service Provider will perform the Shared Services hereunder in accordance with the Service Standards. Except as specifically provided in this Agreement, Service Provider makes no express or implied representations, warranties or guarantees relating to its performance of the Shared Services and the granting of the Shared Assets under this Agreement, including any warranty of merchantability, fitness, quality, non-infringement of third party rights, suitability or adequacy of the Shared Services and the Shared Assets for any purpose or use or purpose. Service Provider will (to the extent possible and subject to Service Provider's contractual obligations) pass through the benefits of any express warranties received from third parties relating to any Shared Service and Shared Asset, and will (at Recipient's expense) assist Recipient with any warranty claims related thereto.

ARTICLE IX  
MISCELLANEOUS

Section 9.01 No Partnership or Joint Venture; Independent Contractor. Nothing contained in this Agreement will constitute or be construed to be or create a partnership or joint venture between or among HCMLP or HCMFA or their respective successors or assigns. The Parties understand and agree that, with the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, this Agreement does not make any of them an agent or legal representative of the other for any purpose whatsoever. With the exception of the procurement by Service Provider of licenses or other rights on behalf of Recipient pursuant to Section 3.01, no Party is granted, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibilities, express or implied, on behalf of or in the name of any other Party, or to bind any other Party in any manner whatsoever. The Parties expressly acknowledge that Service Provider is an independent contractor with respect to Recipient in all respects, including with respect to the provision of the Shared Services.

Section 9.02 Amendments; Waivers. Except as expressly provided herein, this Agreement may be amended only by agreement in writing of all Parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby will be effective unless in writing and signed by all of the Parties affected and then only to the specific purpose, extent and instance so provided. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.03 Schedules and Exhibits; Integration. Each Schedule and Exhibit delivered pursuant to the terms of this Agreement must be in writing and will constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such Schedules and Exhibits constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the Parties in connection therewith.

Section 9.04 Further Assurances. Each Party will take such actions as any other Party may reasonably request or as may be necessary or appropriate to consummate or implement the transactions contemplated by this Agreement or to evidence such events or matters.

Section 9.05 Governing Law. This Agreement and the legal relations between the Parties will be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines unless certain matters are preempted by federal law.

Section 9.06 Assignment. Except as otherwise provided hereunder, neither this Agreement nor any rights or obligations hereunder are assignable by one Party without the express prior written consent of the other Parties.

Section 9.07 Headings. The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement.

Section 9.08 Counterparts. This Agreement and any amendment hereto or any other agreement delivered pursuant hereto may be executed in one or more counterparts and by different Parties in separate counterparts. All counterparts will constitute one and the same agreement and will become effective when one or more counterparts have been signed by each Party and delivered to the other Parties.

Section 9.09 Successors and Assigns; No Third Party Beneficiaries. This Agreement is binding upon and will inure to the benefit of each Party and its successors or assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person or Governmental Entity any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given: (i) immediately when personally delivered; (ii) when received by first class mail, return receipt requested; (iii) one day after being sent for overnight delivery by Federal Express or other overnight delivery service; or (iv) when receipt is acknowledged, either electronically or otherwise, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to the other Parties will, unless another address is specified by such Parties in writing, be sent to the addresses indicated below:

If to HCMLP, addressed to:

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: General Counsel  
Fax: (972) 628-4147

If to HCMFA, addressed to:

Highland Capital Management Fund Advisors, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: General Counsel  
Fax: (972) 628-4147

Section 9.11 Expenses. Except as otherwise provided herein, the Parties will each pay their own expenses incident to the negotiation, preparation and performance of this Agreement, including the fees, expenses and disbursements of their respective investment bankers, accountants and counsel.

Section 9.12 Waiver. No failure on the part of any Party to exercise or delay in exercising any right hereunder will be deemed a waiver thereof, nor will any single or partial exercise preclude any further or other exercise of such or any other right.

Section 9.13 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

Section 9.14 Arbitration; Jurisdiction. Notwithstanding anything contained in this Agreement or the Annexes hereto to the contrary, in the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that either party or such applicable affiliate thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with confidentiality covenants or agreements binding on the other party, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's dispute resolution rules or other mutually agreeable, arbitration service rules. The party initiating arbitration shall pay all arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration.

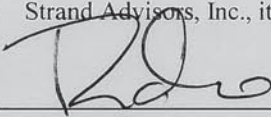
Section 9.15 General Rules of Construction. For all purposes of this Agreement and the Exhibits and Schedules delivered pursuant to this Agreement: (i) the terms defined in Article I have the meanings assigned to them in Article I and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned under GAAP; (iii) all references in this Agreement to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of the body of this Agreement; (iv) pronouns of either gender or neuter will include, as appropriate, the other pronoun forms; (v) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (vi) "or" is not exclusive; (vii) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to, "respectively; (viii) any definition of or

reference to any law, agreement, instrument or other document herein will be construed as referring to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; and (ix) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: Strand Advisors, Inc., its general partner

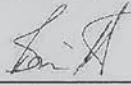
By:  \_\_\_\_\_

Name: James Dondero

Title: President

**HIGHLAND CAPITAL MANAGEMENT FUND  
ADVISORS, L.P.**

By: Strand Advisors XVI, Inc., its general partner

By:  \_\_\_\_\_

Name: Brian Mitts

Title: Assistant Secretary

**Annex A**

**Shared Services**

Compliance

General compliance  
Compliance systems

Facilities

Equipment  
General Overhead  
Office Supplies  
Rent & Parking

Finance & Accounting

Book keeping  
Cash management  
Cash forecasting  
Credit facility reporting  
Financial reporting  
Accounts payable  
Accounts receivable  
Expense reimbursement  
Vendor management

HR

Drinks/snacks  
Lunches  
Recruiting

IT

General support & maintenance (OMS, development, support)  
Telecom (cell, phones, broadband)  
WSO

Legal

Corporate secretarial services  
Document review and preparation  
Litigation support  
Management of outside counsel

Marketing and PR

Public relations

Tax

Tax audit support  
Tax planning  
Tax prep and filing

Investments

Investment research on an ad hoc basis as requested by HCMFA

	Valuation Committee
<u>Trading</u>	Trading desk services
<u>Operations</u>	Trade settlement



## Rukavina, Davor

---

**From:** James Seery <jpseeryjr@gmail.com>  
**Sent:** Thursday, September 17, 2020 4:17 PM  
**To:** DC Sauter  
**Cc:** Gregory V. Demo  
**Subject:** Re: Acis Settlement

DC

I believe your concerns regarding the release are misplaced as it does not bind entities that HCMLP does not control. Greg can walk you through the language, but I do not believe it requires adjustment nor does it create any liability. To the contrary, it reduces liability.

With regard to the HCMLP employee prohibitions, no employee whether legal or non-legal can work on any matter that is inimical to the interests of HCMLP. I, as CEO, and the Independent Board will make the determination as to whether an action violates the prohibition, and a breach of the prohibition will lead to termination for cause. I believe that most of the employees have been informed of this requirement and are following the directive.

With regard to transactional matters, HCMLP employees will continue to work with you on those issues that do not run afoul of the prohibition above. If there is a particular matter where you are taking a potentially adversarial action vis a vis HCMLP, please let me know what it is. We can then consider whether a customized operating protocol for that issue is needed or whether you will simply be on your own. I will make the determination with the advice of counsel. We do not believe the Texas rules of professional responsibility apply in this situation.

Please let me know what matter you are considering with respect to the immediately preceding paragraph, and we will consider how to best address your concerns.

Best. Jim

Jim Seery  
631-804-2049  
jpseeryjr@gmail.com

---

**From:** DC Sauter <DSauter@NexPointadvisors.com>  
**Date:** Thursday, September 17, 2020 at 4:56 PM  
**To:** Jim Seery <jpseeryjr@gmail.com>  
**Cc:** Greg Demo <GDemo@pszjlaw.com>  
**Subject:** RE: Acis Settlement

Jim/Greg, follow up on my email below. I have a few items that have been placed on my plate, and I really need to understand who I can speak with and the extent to which they are permitted to share information with me.

D.C. SAUTER

**NEXPOINT**

---

**From:** DC Sauter  
**Sent:** Tuesday, September 15, 2020 8:55 AM  
**To:** 'James Seery' <jpseeryjr@gmail.com>  
**Cc:** Gregory V. Demo <GDemo@pszjlaw.com>  
**Subject:** RE: Acis Settlement

My apologies for copying Isaac. I was under the mistaken impression that he would have assisted in the settlement.

In my view, the requested clarification is beneficial to Strand, HCMLP, and the other "HCMLP Entities." The documents purport to release ACIS from claims on behalf of, among others, any entity that is "managed" by HCMLP and "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns" of any "HCMLP Entity." Those "HCMLP Entities" lack the authority to bind a whole host of parties in that laundry list, which could result in claims against HCMLP, Strand, and the other "HCMLP Entities" by both the "ACIS Released Parties," who will claim they didn't receive the benefit of the bargain, and the parties on whose behalf the "HCMLP Parties" purported to release claims who didn't consent to the release.

Additionally, I'd like to visit with you all regarding the board's position that prohibits certain HCMLP personnel from working on certain matters.

First, I am unclear whether the prohibition applies to only HCMLP legal personnel or whether it applies to all HCMLP employees. Please clarify.

Second, as you may know, virtually all of these matters are falling into my lap, and in most cases I lack any knowledge about them. It would help me tremendously if current HCMLP employees, and particularly the legal personnel, could provide me with transactional background to assist in the transition of the matter. While I understand the board's concern with Judge Jernigan's order, I don't believe that the Texas Disciplinary Rules of Professional Conduct mandate or even permit an attorney licensed in the State of Texas to refuse to cooperate with a former client in the transfer of a matter to a new attorney. Rule 1.15(d) states that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned." The comments to that rule provide additional clarity: "In every instance of withdrawal and even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client." T.D.R.P.C. Rule 1.15, comment 9. Proper steps may include providing information to new counsel or even continuing to represent the client for a limited time to meet impending deadlines. *Microsoft Corp. v. Commonwealth Sci. & Indus. Research Org.*, 2007 U.S. Dist. LEXIS 91550 \*23-24 fn. 11 (E.D. Tex. Dec. 13, 2007). Even if the board insists that the HCMLP legal personnel cannot continue to represent others in non-HCMLP matters or matters adverse to HCMLP (irrespective of any conflict of interest analysis of whether those attorneys may continue to represent HCMLP in those matters), the ethical rules require that the attorneys provide assistance in transferring those matters to me or others.

Finally, I routinely handle, and am routinely asked to handle, legal matters that relate to real estate for entities owned or controlled by HCMLP (Park West, the Arizona assets, the Maple Ave. property, to name a few). I am not an HCMLP employee, and it's my understanding that NexPoint Advisors, L.P. is not compensated for the time I spend on HCMLP matters. I'm not suggesting that this arrangement should change, but it feels from my perspective that the board's position is only working in one direction. In other words, if I understand the board's position correctly, I can work on both NexPoint and HCMLP matters, but the HCMLP legal employees may only work on HCMLP-related matters. It has also put a significant amount of additional work on my plate. I would like to understand two things. First, what is the scope of my authority in these matters, and what is the proper protocol vis-à-vis you, DSI, and the board? I have tried to take the conservative approach in keeping you all informed and asking for consent or approval where I thought it

appropriate. I assume this is how you'd like to continue to handle things, but I would like confirmation of that. Second, I have heard that you all were working to transfer a couple of the legal personnel (perhaps Thedford and Post) to HCMFA so they could assist with the work load (particularly in the areas where I don't have a significant amount of experience). I'd like to know where that stands and when relief can be expected.

I'm available most of today and tomorrow to discuss.

**D.C. SAUTER**

**NEXPOINT**

O: 972.628.4117 | C: 469.877.6440

---

**From:** James Seery <[jpseeryjr@gmail.com](mailto:jpseeryjr@gmail.com)>  
**Sent:** Tuesday, September 15, 2020 7:01 AM  
**To:** DC Sauter <[DSauter@NexPointadvisors.com](mailto:DSauter@NexPointadvisors.com)>  
**Cc:** Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>; Isaac Leventon <[ILeventon@HighlandCapital.com](mailto:ILeventon@HighlandCapital.com)>  
**Subject:** Re: Acis Settlement

DC. We will discuss and revert to you. Neither Isaac nor anyone else at HCMLP is permitted to work on any issues related to the settlement and release other than as directed by me.

Thanks

Sent from my iPad

On Sep 14, 2020, at 7:08 PM, DC Sauter <[DSauter@nexpointadvisors.com](mailto:DSauter@nexpointadvisors.com)> wrote:

Greg,

I've been asked to review the attached release on behalf of HCMFA and the closed-end funds. I'm concerned that the language below creates an ambiguity as to whether the closed-end funds and HCMFA have released claims against the ACIS parties:

1. The release by Strand, which also serves as the general partner of HCMFA; and
2. The release by each "HCMLP Entity" of its "respective current advisors, trustees, directors, officers, managers, members, partners, current or former employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns."

We would like the final sentence in paragraph 1.a. of the Release to be revised to specifically identify HCMFA and the closed-end funds as parties not covered by the release. Please let me know if you'd like to discuss in more detail.

**D.C. SAUTER | GENERAL COUNSEL, REAL ESTATE**

<image001.jpg>

300 Crescent Court | Suite 700 | Dallas, Texas 75201  
O: 972.628.4117 | C: 469.877.6440 | F: 972.628.4147  
[dsauter@nexpointadvisors.com](mailto:dsauter@nexpointadvisors.com) | [www.NexPointGroup.com](http://www.NexPointGroup.com)

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PRIVILEGE WARNING: The sender or recipient of this message is a member of the legal department at Highland Capital Management. This message and any attachments hereto may constitute attorney work product or be protected by the attorney-client privilege. Do not disclose this message or any attachments hereto without prior consent of a member of the legal department at Highland Capital Management.

<Acis - Release (EXECUTION VERSION).pdf>



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 January 11, 2021

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

JAMES D. DONDERO,

Defendant.

§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§ Adversary Proceeding No.  
§ No. 20-03190-sgj  
§  
§  
§  
§

**ORDER GRANTING DEBTOR'S MOTION FOR A PRELIMINARY INJUNCTION  
AGAINST JAMES DONDERO**

This matter having come before the Court on *Plaintiff Highland Capital Management,*

<sup>1</sup> 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.

*L.P.’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 2] (the “Motion”), filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), and the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”); and this Court having considered (a) the Motion, (b) *Plaintiff Highland Capital Management, L.P.’s Verified Original Complaint for Injunctive Relief* [Adv. Pro. Docket No. 1] (the “Complaint”), (c) the arguments and law cited in the *Debtor’s Amended Memorandum of Law in Support of its Motion for a Temporary Restraining Order and Preliminary Injunction against Mr. James Dondero* [Adv. Pro. Docket No. 3] (the “Memorandum of Law,” and together with the Motion and Complaint, the “Debtor’s Papers”), (d) *James Dondero’s Response in Opposition to Debtor’s Motion for a Preliminary Injunction* [Adv. Pro. Docket No. 52] (the “Opposition”) filed by James Dondero, (e) the testimonial and documentary evidence admitted into evidence during the hearing held on January 8, 2021 (the “Hearing”), including assessing the credibility of Mr. James Dondero, (f) the arguments made during the Hearing, and (g) all prior proceedings relating to the Motion, including the December 10, 2020 hearing on the *Debtor’s Motion for a Temporary Restraining Order and Preliminary Injunction against James Dondero* [Adv. Pro. Docket No. 6] (the “TRO Hearing”); 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 injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and 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 that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted in support thereof, establish good cause for the relief granted herein, and that (1) such relief is necessary to avoid immediate and irreparable harm to the Debtor's estate and reorganization process; (2) the Debtor is likely to succeed on the merits of its underlying claim for injunctive relief; (3) the balance of the equities tip in the Debtor's favor; and (4) such relief serves the public interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is preliminarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero's counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents, in whatever capacity they are acting; (c) communicating with any of the Debtor's employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned, controlled or managed by the Debtor, and the pursuit of the Plan or any

alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the “Prohibited Conduct”).<sup>2</sup>

3. James Dondero is further preliminarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting with him or on his behalf, to, directly or indirectly, engage in any Prohibited Conduct.

4. James Dondero is further preliminarily enjoined and restrained from communicating (in person, telephonically, by e-mail, text message or otherwise) with Scott Ellington and/or Isaac Leventon, unless otherwise ordered by the Court.

5. James Dondero is further preliminarily enjoined and restrained from physically entering, or virtually entering through the Debtor’s computer, email, or information systems, the Debtor’s offices located at Crescent Court in Dallas, Texas, or any other offices or facilities owned or leased by the Debtor, regardless of any agreements, subleases, or otherwise, held by the Debtor’s affiliates or entities owned or controlled by Mr. Dondero, without the prior written permission of Debtor’s counsel made to Mr. Dondero’s counsel. If Mr. Dondero enters the Debtor’s office or other facilities or systems without such permission, such entrance will constitute trespass.

6. James Dondero is ordered to attend all future hearings in this Bankruptcy Case by Webex (or whatever other video platform is utilized by the Court), unless otherwise ordered by the Court.

7. This Order shall remain in effect until the date that any plan of reorganization or liquidation resolving the Debtor’s case becomes effective, unless otherwise ordered by the Court.

---

<sup>2</sup> For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from (1) seeking judicial relief upon proper notice or from objecting to any motion filed in this Bankruptcy Case, or (2) communicating with the committee of unsecured creditors (the “UCC”) and its professionals regarding a pot plan.



8. All objections to the Motion are overruled in their entirety.
9. 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 ###**

**Acknowledgement from HCMLP**

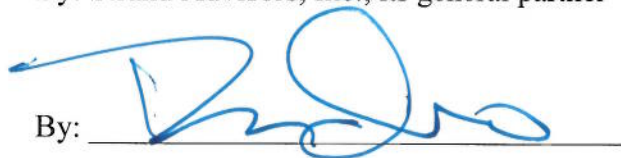
April 15, 2019

Reference is hereby made to certain outstanding amounts loaned from HIGHLAND CAPITAL MANAGEMENT, L.P. (“HCMLP”) to HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. (“HCMF”) for funding of HCMF’s ongoing operations, which are payable on demand and remained outstanding on December 31, 2018 and as of the date hereof.

HCMF expects that it may be unable to repay such amounts should they become due, for the period commencing today and continuing through May 31, 2021.

HCMLP hereby agrees to not demand payment on amounts owed by HCMF prior to May 31, 2021.

Highland Capital Management, L.P.  
By: Strand Advisors, Inc., its general partner

By: 

**Acknowledged By:**

Highland Capital Management Fund Advisors, L.P.  
By: Strand XVI, Inc., its general partner

By: 

## **EXHIBIT 16**

---

**From:** David Klos <DKlos@HighlandCapital.com>  
**Sent:** Friday, February 02, 2018 2:16 PM  
**To:** Corporate Accounting  
**Cc:** Melissa Schroth  
**Subject:** \$3.825mm to Jim

Blair,  
Please set up \$3.825mm to go to Jim this afternoon. Frank has approved.

Drew, this is a new loan.

DAVID KLOS | CONTROLLER



300 Crescent Court | Suite 700 | Dallas, Texas 75201  
C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147  
[dklos@highlandcapital.com](mailto:dklos@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)

# **EXHIBIT 17**

---

**From:** Blair Hillis <Bhillis@HighlandCapital.com>  
**Sent:** Wednesday, August 01, 2018 1:12 PM  
**To:** David Klos; Corporate Accounting  
**Cc:** Melissa Schroth  
**Subject:** RE: \$2.5mm loan to Dondero

Funds have been transferred to Jim's account. Thanks!

Kind Regards,  
Blair Roeber

---

**From:** David Klos  
**Sent:** Wednesday, August 1, 2018 10:47 AM  
**To:** Corporate Accounting  
**Cc:** Melissa Schroth  
**Subject:** \$2.5mm loan to Dondero

Jim has authorized a \$2.5mm loan from HCMLP to Dondero.

Blair, can you please set up this wire today?  
Drew, can you please draw up loan docs for execution?

DAVID KLOS | CONTROLLER



300 Crescent Court | Suite 700 | Dallas, Texas 75201  
C: 214.674.2926 | O: 972.419.4478 | F: 972.628.4147  
[dklos@highlandcapital.com](mailto:dklos@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)

## **EXHIBIT 18**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

3 In re: )Chapter 11  
4 )  
4 HIGHLAND CAPITAL MANAGEMENT, LP, )  
5 Debtor. )Case No.  
 )19-34054-SGJ-11

6 HIGHLAND CAPITAL MANAGEMENT, LP, )

7 Plaintiff, )

8 vs. )Advisory Proceeding No.  
 )21-03004

9 NEXPOINT ADVISORS, LP; JAMES )  
10 DONDERO; NANCY DONDERO; and THE )  
DUGABOY INVESTMENT TRUST, )

11 Defendants. )

12 \*\*\*\*\*  
13 REMOTE DEPOSITION OF  
14 DUSTIN NORRIS  
December 1, 2021  
15 \*\*\*\*\*

16 DUSTIN NORRIS, produced as a witness at the  
17 instance of the Highland Capital Management, was  
18 duly sworn and deposed in the above-styled and  
19 numbered cause on December 1, 2021, from  
20 10:01 a.m. CST to 3:25 p.m. CST, stenographically  
21 reported, pursuant to the Federal Rules of Civil  
22 Procedure and the provisions stated on the record.

23 Job Number: 203362  
24 Reported by: Rebecca A. Graziano, CSR, RMR, CRR  
Texas CSR 9306  
25 California CSR 14407  
Illinois CSR 084.004659



Page 2

1 APPEARANCES

2 (all attendees appearing via remote videoconference)

3

4 REPRESENTING HIGHLAND CAPITAL MANAGEMENT, LP:

5 John Morris, Esq.

6 Hayley Winograd, Esq.

7 PACHULSKI STANG ZIEHL & JONES LLP

8 780 Third Avenue

9 New York City, New York 10017

10 REPRESENTING NEXPOINT ADVISORS, LP:

11 Davor Rukavina, Esq.

12 MUNSCH HARDT KOPF & HARR, PC

13 500 North Akard Street

14 Dallas, Texas 75201

15 REPRESENTING JAMES DONDERO, NANCY DONDERO, HCRE,

16 and HCMS:

17 Michael Aigen, Esq.

18 STINSON LLP

19 3102 Oak Lawn Avenue

20 Dallas, Texas 75219

21 ALSO PRESENT:

22 La Asia Canty, Paralegal,

23 Pachulski Stang Ziehl & Jones

24

25

Page 4

1 PREVIOUSLY MARKED EXHIBITS

2 NUMBER DESCRIPTION PAGE

3 Exhibit 45 Highland Capital Management Fund

4 Advisors, LP, Consolidated

5 Financial Statements and

6 Supplemental Information, 12/31/18;

7 Bates D-CNL-002273 through 002296.... 46

8 Exhibit 59 Supplemental 15(c) Info Request;

9 Bates HCMFAS 000025 through 000031... 71

10 Exhibit 147 BBVA Compass Bank Statement, Date

11 Ending 5/31/19 (no Bates range)..... 51

12 Exhibit 182 Memo Dated 5/28/19 (no Bates range).. 119

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Page 3

1 INDEX

2 PAGE

3 EXAMINATION BY MR. MORRIS..... 5

4

5

6 EXHIBITS

7 NUMBER DESCRIPTION PAGE

8 Exhibit 185 Plaintiff's Third Amended Notice of

9 Rule 30(b)(6) Deposition to

10 Highland Capital Management Fund

11 Advisors..... 7

12

13

14 PREVIOUSLY MARKED EXHIBITS

15 NUMBER DESCRIPTION PAGE

16 Exhibit 1 Complaint for (I) Breach of

17 Contract and (II) Turnover of

18 Property of the Debtor's Estate..... 38

19 Exhibit 5 Defendant's Original Answer..... 29

20 Exhibit 13 Defendant's Amended Answer..... 158

21 Exhibit 36 Email Chain; Bates D-HCMFA290880

22 through 290883..... 87

23

24

25

Page 5

1 PROCEEDINGS

2 (On the record at 10:01 a.m. CST)

3 (Witness duly sworn.)

4 DUSTIN NORRIS,

5 being first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. MORRIS:

8 Q Good morning, Mr. Norris. As you may

9 recall, my name is John Morris. I'm an attorney

10 at Pachulski Stang Ziehl & Jones, and we're

11 counsel to the reorganized debtor known as

12 Highland Capital Management, LP, and we're here

13 for your deposition today.

14 Do you understand that?

15 A Yes, sir.

16 Q And do you understand that you're being

17 deposed today in your capacity as what's called a

18 Rule 30(b)(6) witness on behalf of Highland

19 Capital Management Fund Advisors, LP?

20 A I do.

21 Q Can we refer to Highland Capital

22 Management Fund Advisors, LP, as "HCMFA"?

23 A Yes, that works.

24 Q And can we refer to Highland Capital

25 Management, LP, as either "Highland" or "HCMLP"?

Page 6

1 Dustin Norris  
 2 A Yes.  
 3 Q Okay. Are you aware that your answers  
 4 today will bind HCMFA?  
 5 A Generally, yes.  
 6 Q Okay. Have you seen the notice that was  
 7 served by Highland on HCMFA in connection with  
 8 this deposition?  
 9 A I have.  
 10 Q Okay. I've -- I've examined you before;  
 11 right?  
 12 A Yes.  
 13 Q Okay. So the rules are the exact same,  
 14 and they are very simple. If I ask a question, I  
 15 would ask you to refrain from answering until I've  
 16 completed my question; is that fair?  
 17 A Yes, it is. Thank you.  
 18 Q And if I begin a question or respond  
 19 before you've completed your answer, will you let  
 20 me know that?  
 21 A Yes.  
 22 Q We're going to be putting documents up on  
 23 the screen from time to time today. If at any  
 24 time you believe you need to see other portions of  
 25 the document in order to give complete and

Page 8

1 Dustin Norris  
 2 know, John and Dustin, I did not send this  
 3 to you, Dustin. All that it does is  
 4 changes the time of today's deposition.  
 5 It's identical to the last one that you  
 6 did get.  
 7 THE WITNESS: Okay. And I have the  
 8 last one here with me as well.  
 9 BY MR. MORRIS:  
 10 Q Okay. So there's no -- I'll represent to  
 11 you that there's no difference between the one  
 12 that's on the screen and the one you have except  
 13 that the one on the screen says "Third Amended  
 14 Notice," and it was scheduled for 9:00 today.  
 15 It's scheduled for 10:00 today, the -- the time  
 16 that we're beginning.  
 17 Do you have any other documents in  
 18 front of you other than the deposition notice?  
 19 A I do.  
 20 Q What -- what other documents do you have  
 21 before you?  
 22 A Yeah. I have the original complaint I  
 23 believe it's called -- forgive me if I call them  
 24 the wrong items --  
 25 Q Uh-huh.

Page 7

1 Dustin Norris  
 2 accurate answers, will you let me know that?  
 3 A Yes.  
 4 Q If you need a break at any time, will you  
 5 let me know that as well?  
 6 A I will.  
 7 Q Okay.  
 8 MR. MORRIS: I would ask my  
 9 colleague, Ms. Canty, to put up on the  
 10 screen the Rule 30(b)(6) deposition  
 11 notice.  
 12 (Norris Exhibit 185 marked.)  
 13 (Reporter discussion off the record.)  
 14 MR. MORRIS: Okay. Asia, what  
 15 exhibit number should we put on this  
 16 document?  
 17 MS. CANTY: 185.  
 18 MR. MORRIS: Okay. Davor and  
 19 Michael, this will be Exhibit 185.  
 20 And if we can scroll down and show  
 21 it to Mr. Norris.  
 22 BY MR. MORRIS:  
 23 Q Do you see that this is the plaintiff's  
 24 third amended notice of deposition for today?  
 25 MR. RUKAVINA: And just so you

Page 9

1 Dustin Norris  
 2 A -- but the original complaint from HCMLP.  
 3 I have the original answer response from HCMFA. I  
 4 have the amended response. I have the declaration  
 5 from Mr. Sauter. I have copies of the promissory  
 6 notes. I have the shared services agreement. I  
 7 have a -- incumbency certificates, which will help  
 8 me respond to one of your questions in the  
 9 30(b)(6) notice. And I have a board to the  
 10 memo [sic] regarding NAV error, and I have the  
 11 "Defendant's Second Motion for Leave to Amend  
 12 Answer and Brief in Support Thereof" that was  
 13 filed yesterday.  
 14 So a number of documents that -- and I  
 15 also have up on my screen your exhibits that I  
 16 believe we'll be going through in one of the --  
 17 let me check here -- Topic Number 5. So I have  
 18 open, you know, a 650-page document that was filed  
 19 in Docket 35 on May 24th, I believe, is the  
 20 correct document. So those are the materials that  
 21 I have.  
 22 Q Excellent. I appreciate that.  
 23 So you've seen -- you've seen at least  
 24 the plaintiff's second amended notice of  
 25 Rule 30(b)(6) deposition before today. Do I have

Page 10

1 Dustin Norris  
 2 that right?  
 3 A That's correct.  
 4 Q And you have that with you; right?  
 5 A I do.  
 6 Q Okay. Are you prepared to testify on  
 7 behalf of HCMFA today on – in connection with  
 8 each of the topics in the deposition notice?  
 9 A Yes, I am.  
 10 Q All right.  
 11 MR. MORRIS: Let's just, for the  
 12 record, scroll down to make sure that the  
 13 topics are the same as the – the one that  
 14 Mr. Norris has in front of him.  
 15 BY MR. MORRIS:  
 16 Q Do you see the first five topics on the  
 17 screen?  
 18 A I do.  
 19 Q All right. Can you confirm that they're  
 20 the same topics that you have in the second  
 21 amended notice of deposition?  
 22 A Yes. I'm looking now.  
 23 Yes, they all are the same.  
 24 Q Okay. And if we can continue to scroll  
 25 down, you see Topics 6, 7, and 8 up on the screen,

Page 12

1 Dustin Norris  
 2 I reviewed the depositions of  
 3 Mr. Seery, of Frank Waterhouse, Dave Klos, and  
 4 Kristin Hendrix. I met in person and by Zoom with  
 5 Mr. Rukavina over the last few weeks, and – so  
 6 that – that's the general – you know, there may  
 7 have been other things, but that's the general  
 8 overview of the things that I did –  
 9 Q I appreciate –  
 10 A – to understand the company's position.  
 11 Q I appreciate that.  
 12 So just focusing in on the people that  
 13 you spoke with in connection with your  
 14 preparation, one was Davor; right?  
 15 A Correct.  
 16 And I – I may have – I don't know if  
 17 I said it or not, but DC Sauter as well I also  
 18 spoke with.  
 19 Q Okay. So the other people are DC Sauter,  
 20 Jason Post, and Mr. Dondero. Do I have that  
 21 right?  
 22 A Correct.  
 23 Q Did you speak with Frank Waterhouse at  
 24 all?  
 25 A No, I did not.

Page 11

1 Dustin Norris  
 2 and 9. Are they the same as what you have?  
 3 A Can you scroll down for 9?  
 4 Q Uh-huh.  
 5 A They look to be the same, yes.  
 6 Q Okay. And let's just look at the last  
 7 few. How about 10 through 14? Are they the same  
 8 as the topics that are in your second amended  
 9 notice?  
 10 A They look to be the same, yes.  
 11 Q Okay. And did you do anything to prepare  
 12 for today's deposition?  
 13 A I did.  
 14 Q What did you do?  
 15 A I reviewed all of the pleadings. I  
 16 reviewed all of the – the documents that were, I  
 17 believe, responsive to – to help me to respond to  
 18 this, look through your exhibits. I had met with  
 19 Mr. Rukavina as counsel. I met and spoke with  
 20 Mr. Dondero. I spoke with Jason Post.  
 21 I spoke with – I reviewed my  
 22 documents internally and emails, things that I  
 23 might have had, confirmed with our IT group that  
 24 they have provided all documents responsive to  
 25 your discovery requests.

Page 13

1 Dustin Norris  
 2 Q Is there any particular reason you didn't  
 3 speak with Mr. Waterhouse?  
 4 A Yes.  
 5 Q And what – why didn't you speak with  
 6 Mr. Waterhouse?  
 7 A My – my – yeah, sorry.  
 8 My understanding is his counsel did  
 9 not allow us to speak with him regarding this,  
 10 because HCMLP had sued him for various things, and  
 11 so we weren't allowed to talk with him.  
 12 You'll – you'll note that DC, earlier  
 13 on, had spoken to him. I believe that was back in  
 14 April, if you look back and I'd refer you to  
 15 Mr. Sauter's declaration. But in preparation for  
 16 this, we did not speak with him. We needed to  
 17 wait for his deposition based on his attorney's  
 18 instructions.  
 19 Q How many times did you speak with  
 20 Mr. Dondero about today's deposition?  
 21 A Multiple times over the last few weeks.  
 22 Q And was Mr. Rukavina present for those  
 23 discussions?  
 24 A He was not.  
 25 Q Can you tell me what you discussed with

Page 14

1 Dustin Norris  
 2 Mr. Dondero about today's deposition?  
 3 A Yeah. Discussed with him general view of  
 4 the company from his perspective. We discussed  
 5 particularly around -- and we'll get into more  
 6 details on this -- but around the purpose and  
 7 transfer of cash, the seven-and-a-half million  
 8 dollars. And I guess there were two transactions.  
 9 Discussed with him what he remembered  
 10 in discussions with Frank Waterhouse when he  
 11 instructed him to transfer the cash, and any  
 12 recollection he had regarding the notes or the --  
 13 the -- the promissory notes.  
 14 And so those were the general topics.  
 15 And we did talk about --  
 16 Q Did Mr. --  
 17 A Sorry. Go ahead.  
 18 Q Yeah, I don't mean to step on your words.  
 19 A No, no.  
 20 We talked about the NAV error, we  
 21 talked about responsibility for the NAV error and  
 22 those aspects as well.  
 23 Q Did -- did Mr. Dondero tell you when he  
 24 first learned of the existence of the notes?  
 25 A No.

Page 16

1 Dustin Norris  
 2 A Demanded.  
 3 Q Okay. How about your conversations with  
 4 Mr. Post? Did the subject of when he learned  
 5 about the existence of the notes come up?  
 6 A No. That was not -- a discussion with  
 7 Jason Post -- Post -- talking with Jason was more  
 8 around the NAV error, the events surrounding the  
 9 NAV error, facts and circumstances around the NAV  
 10 error.  
 11 Q Okay. And were your discussions with  
 12 Mr. Sauter limited to the investigation that he  
 13 undertook earlier this year that's reflected in  
 14 his declaration?  
 15 A I would say it's not limited to that.  
 16 Q What other topics did you discuss with  
 17 Mr. Sauter beyond the investigation that he  
 18 undertook that's reflected in his declaration?  
 19 MR. RUKAVINA: And I would just  
 20 caution you, Dustin, that to the extent  
 21 that you and Mr. Sauter discussed factual  
 22 matters, that's fair game.  
 23 But as far as if you discussed  
 24 litigation strategy, that's not fair game.  
 25 So be careful with your answer, please,

Page 15

1 Dustin Norris  
 2 Q Did you ask him in connection with your  
 3 preparation for today's deposition?  
 4 A What I did ask, I asked him -- I said,  
 5 "Did you tell Frank Waterhouse that there should  
 6 be -- that this should be a loan?"  
 7 And his response was, "No, that I  
 8 never told Frank it should be a loan, and Frank  
 9 never asked if it should be a loan." And that the  
 10 intent -- and the reason for the transfer was  
 11 compensation for the NAV error.  
 12 And so that was -- he did not know --  
 13 and if I -- if I remember correctly, looking at  
 14 his deposition, I believe he did not know about  
 15 the notes at that time and found out about them  
 16 much later.  
 17 Q I know, and I'm trying to understand from  
 18 you if you can tell me, as HCMFA's 30(b)(6)  
 19 representative, whether you can share with me when  
 20 Mr. Dondero first learned of the existence of the  
 21 notes.  
 22 A It -- it would have been -- I believe, if  
 23 my understanding is correct, it would have been  
 24 after they were demanded.  
 25 Q After they were?

Page 17

1 Dustin Norris  
 2 and tell Mr. Morris what you can and can't  
 3 answer.  
 4 THE WITNESS: Yeah.  
 5 So early on with Mr. Sauter,  
 6 discussions were around if I had any  
 7 knowledge of the note, if he had any  
 8 knowledge of the note, trying to discover  
 9 what the notes were, what they were  
 10 related to, and neither of us had  
 11 knowledge related to notes.  
 12 And then discussions around more  
 13 generally -- I'm trying to think back.  
 14 There were many discussions with  
 15 Mr. Sauter on the topic.  
 16 General facts and circumstances of  
 17 what he was learning from his  
 18 investigation in which -- all of which I  
 19 would refer you to his declaration.  
 20 And then subsequent, talking with  
 21 him regarding the -- I'm trying to  
 22 recollect the -- the key components.  
 23 But it was general overview of --  
 24 of the notes and NAV error and the  
 25 process. He wasn't here during much of

Page 18

1 Dustin Norris  
 2 that time period or involved, and so we  
 3 were talking together based on what he was  
 4 doing.  
 5 BY MR. MORRIS:  
 6 Q Who are you employed by today?  
 7 A NexPoint Advisors.  
 8 Q Do you hold any position or title with  
 9 HCMFA?  
 10 A I do.  
 11 Q And what's your position or title with  
 12 HCMFA?  
 13 A Executive vice president is my officer  
 14 role.  
 15 Q And when did you become an officer of  
 16 HCMFA?  
 17 A So I – I was originally secretary – and  
 18 I can't remember if I was assistant secretary, but  
 19 I've been involved with HCMFA since 2012. I don't  
 20 know if I was added as an assistant secretary at  
 21 that time; but for many – for several years, I've  
 22 been an officer of HCMFA.  
 23 Q And you were an officer in 2018 and 2019;  
 24 is that right?  
 25 A Correct. I was secretary in 2018, and –

Page 20

1 Dustin Norris  
 2 A I am executive vice president in the  
 3 officer capacity, and my role is – as an employee  
 4 is head of distribution and chief product  
 5 strategist.  
 6 Q Okay. So just to summarize, you're the  
 7 executive vice president of NexPoint Advisors, LP;  
 8 correct?  
 9 A Correct.  
 10 Q And that's an officer position; correct?  
 11 A It is.  
 12 Q And when did you attain that title?  
 13 A Probably – I don't have the incumbency  
 14 certificates, but it was probably the same time as  
 15 HCMFA.  
 16 Q Is it fair to say that it was sometime  
 17 before January 1st, 2018?  
 18 A No.  
 19 Q Can you give me an estimate of when that  
 20 was? Feel free –  
 21 A Yeah. The time – the timeline for HCMFA  
 22 was April 2019. I was secretary before that, and  
 23 I don't recall if NexPoint Advisors changed at the  
 24 same time.  
 25 Q Okay. Can I refer to HCMFA and NexPoint

Page 19

1 Dustin Norris  
 2 I'm looking at the incumbency certificates here –  
 3 and in 2019 in April became executive vice  
 4 president. So from January to – January 2018 to  
 5 April 2019, I was secretary and then became  
 6 executive vice president.  
 7 Q When did you first learn of the existence  
 8 of the notes?  
 9 A So it was after they were demanded, and it  
 10 was – so I believe the demand came in in early  
 11 2020 – 2021. So January-ish 2021.  
 12 Q Do you have any role or any title with any  
 13 of the funds that are managed by either NexPoint  
 14 or HCMFA?  
 15 A I do.  
 16 Q Can you describe those roles or titles for  
 17 me, please?  
 18 A Yeah. I'm – I'm the executive vice  
 19 president of the funds, and my role more broadly  
 20 is I am the head of distribution and chief product  
 21 strategist. And so in that role, I lead the sales  
 22 and business development and marketing for the  
 23 funds, more broadly.  
 24 Q And what is your title with NexPoint  
 25 Advisors, LP?

Page 21

1 Dustin Norris  
 2 Advisors, LP, together as "the advisers"?  
 3 A That's fine.  
 4 Q Okay. So is it fair to say that you were  
 5 the executive vice president, which was an officer  
 6 position, for each of the advisers as of April  
 7 2019?  
 8 A Yes.  
 9 Q Okay. And –  
 10 A I believe that's correct.  
 11 Q And you also serve as the executive vice  
 12 president of the funds that each of the advisers  
 13 manages. Do I have that right?  
 14 A Yes. Currently.  
 15 Q And have you held the –  
 16 A Yes, currently.  
 17 Q And when did you become the executive vice  
 18 president of the funds?  
 19 A I don't remember the exact date, if that  
 20 was around the same time, but I was the secretary  
 21 before that and assistant secretary before that,  
 22 dating back to 2012.  
 23 Q So you've been – is it fair to say that  
 24 you've been an officer of the funds managed by the  
 25 advisers since at least 2013?

Page 22

1 Dustin Norris  
 2 A I believe so. I'd have to go back and  
 3 look for sure, but I believe. There may have been  
 4 periods of time where I was not, but yes.  
 5 Q Okay. Were any of those periods of time  
 6 when you were not, at any point since 2018 to the  
 7 present?  
 8 A I don't believe so.  
 9 Q Okay. So to the best of your  
 10 recollection, you've served as an executive vice  
 11 president of each of the funds managed by the  
 12 advisers since at least the beginning of 2018; is  
 13 that fair?  
 14 A No. That's – that's different than my  
 15 prior testimony that – I was secretary until  
 16 April –  
 17 Q I apologize. Let me restate the question.  
 18 You've been an officer of – of the  
 19 funds managed by the advisers on a continuous  
 20 basis since at least the beginning of 2018; fair?  
 21 A I believe that's correct, yes.  
 22 Q Thank you for the question – for – for  
 23 the correction.  
 24 So as I think you pointed out earlier,  
 25 one of the topics on the 30(b)(6) notice is the

Page 24

1 Dustin Norris  
 2 changed.  
 3 But Brad Ross was president of HCMFA  
 4 from January 1st, 2018, until, I believe,  
 5 February 2018 – sorry – yeah, until  
 6 February 2018.  
 7 In that same time period, Brad Ross,  
 8 president; Trey Parker, executive vice president;  
 9 Frank Waterhouse, treasurer; Dustin Norris,  
 10 secretary.  
 11 And effective 26th of February –  
 12 Q I apologize. What is Mr. Parker's title?  
 13 A Executive vice president.  
 14 Q Thank you.  
 15 A And beginning February 26th, 2018, Trey  
 16 Parker, executive vice president; Frank  
 17 Waterhouse, treasurer; and Dustin Norris,  
 18 secretary; and no longer president, Brad Ross.  
 19 There's no president on the lineup.  
 20 So continuing on, April 11th, 2019,  
 21 Dustin Norris, executive vice president; Frank  
 22 Waterhouse, treasurer; Lauren Thedford, secretary.  
 23 Q And Trey Parker was no longer an officer  
 24 as of that time?  
 25 A He was no longer an officer.

Page 23

1 Dustin Norris  
 2 identity of officers, directors, and employees of  
 3 HCMFA?  
 4 A Uh-huh.  
 5 Q Do you want to take a look at that topic  
 6 on the document that you have in front of you?  
 7 A Yes.  
 8 Q Okay.  
 9 A That is – which topic?  
 10 Q 13.  
 11 A 13, yes.  
 12 Q Okay. So let's focus on 13 for a moment.  
 13 Can you – can you identify for me  
 14 HCMFA's officers from January 1st, 2018, to the  
 15 present –  
 16 A Yes.  
 17 Q – including names and titles?  
 18 A Yes.  
 19 Q Okay.  
 20 A So from January 1st, 2018 – and I don't  
 21 have – I – I'm assuming that the dates that I  
 22 have on the incumbency certificates are complete,  
 23 but I'm not certain, and – if there was one in  
 24 between, but I'm assuming this is – that the  
 25 dates I have changing is – is effective when they

Page 25

1 Dustin Norris  
 2 Q Okay.  
 3 A And February 18th, 2021, Dustin Norris,  
 4 executive vice president; Frank Waterhouse,  
 5 treasurer; Brian Mitts, assistant treasurer; David  
 6 Willmore, secretary. So Lauren Thedford, no  
 7 longer secretary.  
 8 Q And have there been any changes since  
 9 February 2021?  
 10 A Yes. You have April 8, 2021, Dustin  
 11 Norris, executive president; Frank Waterhouse,  
 12 treasurer; Will Mabry, assistant treasurer; and  
 13 Stephanie Vitiello, secretary.  
 14 Again, I – I don't have – this is  
 15 based on what was provided to me with effective  
 16 dates. I don't know if there was any that were  
 17 missing, if that's complete, but I – I believe  
 18 those are accurate.  
 19 Q Is it fair to say that you're relying on  
 20 exclusively on the incumbency certificates to  
 21 identify the officers of HCMFA since January 1st,  
 22 2018?  
 23 A For this purpose, yes.  
 24 Q Do you have any other information that you  
 25 can share with me regarding the identity of any

Page 26

1 Dustin Norris  
 2 officers of HCMFA since January 1st, 2018?  
 3 A I don't, no.  
 4 Q Okay. Can you identify for me HCMFA's  
 5 direct and indirect owners since January 1st,  
 6 2018?  
 7 A I can, yes. Generally Jim Dondero and  
 8 Mark Okada are the indirect owners through trusts.  
 9 They own approximately two-thirds, Jim Dondero, a  
 10 little less than a third, Mark Okada, with a  
 11 general partner that is – that owns 1 percent.  
 12 Q And who is the general partner?  
 13 A It's a Strand entity that I believe is  
 14 owned 100 percent by Mr. Dondero.  
 15 Q So Mr. Dondero controls the general  
 16 partner –  
 17 A Right.  
 18 Q – of HCMFA?  
 19 A Correct, and owns approximately two-thirds  
 20 of the equity.  
 21 Q And is that a controlling interest to the  
 22 best of your knowledge?  
 23 A Yes, I believe so.  
 24 Q Okay. Does HCMFA have any directors?  
 25 A It does not. It has a sole director

Page 28

1 Dustin Norris  
 2 Do you see that?  
 3 A I do.  
 4 Q Are you prepared to answer questions on  
 5 that topic?  
 6 A I am.  
 7 Q All right. You're aware that obviously  
 8 Highland has commenced an adversary proceeding  
 9 against HCMFA to collect on two promissory notes;  
 10 right?  
 11 A I am, yes, and I believe this right here  
 12 is the complaint filed January 22nd.  
 13 Q Okay. And you're aware that the notes  
 14 that are the subject of the lawsuit were dated  
 15 May 2nd and May 3rd, 2019, respectively; right?  
 16 A Sorry. Can you repeat that?  
 17 Q You're aware that the notes that are the  
 18 subject of the lawsuit are dated May 2nd and  
 19 May 3rd, 2019, respectively; correct?  
 20 A Yes. The notes that are attached to the  
 21 complaint, May 2nd and May 3rd.  
 22 Q Okay. And can we refer to those two  
 23 notes – those two promissory notes for the rest  
 24 of this deposition collectively as "the notes"?  
 25 A Yes.

Page 27

1 Dustin Norris  
 2 through the general partners. So HCMFA does  
 3 not – Strand – whatever the Strand entity does,  
 4 Jim Dondero is the sole director.  
 5 Q Okay. And what about employees? Does  
 6 HCMFA have any employees?  
 7 A It does have some front-office employees,  
 8 trading professionals.  
 9 Q Are there any employees who perform any  
 10 services other than trading services?  
 11 A Trading in front-office investment  
 12 analysts, portfolio managers, generally that's  
 13 been the structure with HCMFA, is they held –  
 14 they had employees that performed front-office  
 15 functions, and we, as I believe you're aware,  
 16 outsourced the back-office accounting, compliance,  
 17 and legal services to Highland Capital Management,  
 18 LP, during this time period.  
 19 Q Let's go to Topic Number 12.  
 20 A Okay.  
 21 Q And Topic Number 12 asks for a witness who  
 22 can testify as to all communications that HCMFA  
 23 "made in the bankruptcy case concerning the notes,  
 24 including any pleadings, court filing, or  
 25 argument."

Page 29

1 Dustin Norris  
 2 Q Okay. And you're aware that after  
 3 Highland commenced this action, HCMFA filed its  
 4 original answer; correct?  
 5 A That's correct.  
 6 Q Okay. And Topic Number 1 on your list, in  
 7 fact, is the answer, correct, the original answer?  
 8 A That's correct. It's Topic Number 1.  
 9 MR. MORRIS: Okay. Can we put  
 10 Deposition Exhibit 5 up on the screen?  
 11 We're going to look at the original  
 12 answer.  
 13 (Exhibit 5 tendered.)  
 14 BY MR. MORRIS:  
 15 Q And, again, feel free to let me know if  
 16 there's any portion of this document that you need  
 17 to see. But looking at the first page – and  
 18 perhaps we can continue to scroll through it – is  
 19 this the original answer that was filed on behalf  
 20 of HCMFA on March 1st, 2021?  
 21 A I'll take your representation that it is.  
 22 It looks to be, yeah.  
 23 Q Okay.  
 24 A I was not involved in the filing of it,  
 25 but..

Page 30

1 Dustin Norris  
 2 Q Okay. Is the copy that you have with you  
 3 dated March 1st, 2021?  
 4 A Yes, it is.  
 5 Q And if you can turn to Page 6 of 7, does  
 6 it appear to be the exact same as what appears on  
 7 the screen, showing the March 1st, 2021, date?  
 8 A It does.  
 9 Q And do you refer to the March 1st, 2021,  
 10 date, as "the answer date"?  
 11 A Yes.  
 12 Q Okay. HCMFA did not assert any  
 13 affirmative defenses in this pleading; correct?  
 14 A That's my understanding.  
 15 Q Okay. And HCMFA had full access to you as  
 16 of March 1st, 2021; correct?  
 17 A Yes.  
 18 Q And HCMFA had full access to Mr. Dondero  
 19 as of March 1st, 2021; correct?  
 20 A In the term "full access," they could have  
 21 talked to him, yes.  
 22 Q Right. And there was no restriction from  
 23 the bankruptcy court or otherwise on HCMFA's  
 24 ability to communicate with Mr. Dondero that you  
 25 know of; correct?

Page 32

1 Dustin Norris  
 2 fall of 2020 – late summer 2020, actually. And  
 3 so she was not accessible for things like this.  
 4 Q How about Mr. Post? Do you know who  
 5 Mr. Post was employed by in 2018 and 2019?  
 6 A 2018 and '19, he was employed by Highland  
 7 Capital Management, LP.  
 8 Q Do you know whether, in your conversations  
 9 with him, does he have any personal knowledge  
 10 regarding the NAV error?  
 11 A Yes.  
 12 Q Was he involved in any of the issues  
 13 surrounding the NAV error?  
 14 A He was knowledgeable – as he was  
 15 chief – chief compliance officer of the retail  
 16 advisers at that time, and interacted with the  
 17 HCMLP employees and the board regarding the NAV  
 18 error, he also – in your schedules, you'll notice  
 19 in one of the memos, he participated in calls with  
 20 the SEC, and so he was – he was involved in the  
 21 process of the NAV error and understood and worked  
 22 with the other HCMLP employees, which naturally  
 23 they would. We had outsourced valuation services  
 24 to HCMLP. We had outsourced legal and compliance  
 25 to HCMLP, and as such, that was all part of what

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1 Dustin Norris  
 2 A None that I know of.  
 3 Q And there was no restriction or limitation  
 4 on HCMFA's ability to speak with you at or prior  
 5 to March 1st, 2021; correct?  
 6 A That's correct.  
 7 Q How about Ms. Thedford? Are you aware of  
 8 any restriction or limitation on HCMFA's ability  
 9 to speak with her prior to March 1st, 2021?  
 10 A Yes.  
 11 Q Okay. And what restriction was that?  
 12 A Yeah. So she was part of the Highland  
 13 legal team. She was an employee of HCMLP. And  
 14 during this time period, we had outsourced our  
 15 legal and compliance functions to them. And if –  
 16 I would refer you to Mr. Sauter's declaration and  
 17 the attachments and schedules. There's a very  
 18 strict direction from Mr. Seery that  
 19 individuals – particularly on the legal team –  
 20 could not work on anything that would be inimical  
 21 to the debtor.  
 22 Q Okay.  
 23 A And so Ms. Thedford, on multiple  
 24 occasions, told us she was unable to work on  
 25 things, and that began back in fall of 2000- –

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1 Dustin Norris  
 2 they were working on.  
 3 Q Did – did – were there any restrictions  
 4 or limitations on HCMFA's ability to speak with  
 5 Mr. Post prior to March 1st, 2021?  
 6 A So once – so Jason – one important  
 7 component here is Jason Post did leave the debtor,  
 8 and working with Mr. Seery, I believe, to then  
 9 leave and become an employee of NexPoint Advisors,  
 10 and that was at the request of our retail board,  
 11 as there were restrictions on Mr. Post at that  
 12 time.  
 13 And as chief compliance officer of the  
 14 funds, the board had become very uncomfortable  
 15 that they had restrictions on Mr. Post. And so it  
 16 was in everybody's interest to allow him to become  
 17 an employee of NexPoint Advisors, and so that was  
 18 late 2020, I believe. I don't know the exact  
 19 date. And at that time, there were certain things  
 20 that Jason was able to then help the adviser with,  
 21 but there were still restrictions. And he had  
 22 limited access to his prior data. He left the  
 23 debtor, but he didn't have – I believe he had  
 24 restrictions on what he could access in the  
 25 information.



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1 Dustin Norris  
 2 Q Okay. But it is fair to say that between  
 3 January 21st, 2021, the day that the complaint was  
 4 filed, and March 1st, 2021, the date that HCMFA  
 5 filed its original answer, HCMFA had complete and  
 6 unfettered access to you, to Mr. Dondero, and  
 7 Mr. Post; correct?  
 8 A Again, the complete and unfettered access  
 9 on the Jason Post aspect, they could have talked  
 10 to him. I'm not sure if there were any other  
 11 restrictions related to what he had or information  
 12 he had or based on his prior role of the debtor,  
 13 he was restricted on what he could or couldn't  
 14 talk about, if he had any lease agreement. I'm  
 15 not certain on that. But, yes, we could talk  
 16 to – or HCMFA could talk to Mr. Post.  
 17 Q Okay. And the topics that you just raised  
 18 are speculation on your part; correct?  
 19 A It is.  
 20 Q You're not aware of any restriction of –  
 21 you don't have any knowledge of any restriction or  
 22 limitation placed on HCMFA in respect of its  
 23 ability to communicate with Mr. Post between  
 24 January 21st, 2021, and March 1st, 2021; correct?  
 25 A Based on my personal knowledge, no. There

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1 Dustin Norris  
 2 the notes?  
 3 A And you mean an argument to the Court?  
 4 Q Yes.  
 5 A Not that I'm aware of.  
 6 Q Okay. Are you aware of any statement of  
 7 any kind that was made to the bankruptcy court  
 8 prior to the answer date that concerned or related  
 9 in any way to the notes?  
 10 A Not that I can remember. But there's  
 11 obviously been a lot of documents with the Court,  
 12 but not that I'm aware of.  
 13 Q Right. But you – did you do anything to  
 14 prepare yourself to answer questions on Topic 12?  
 15 A Yes.  
 16 Q And do you believe that you're able to  
 17 competently answer my questions relating to  
 18 Topic 12 as HCMFA's 30(b)(6) witness?  
 19 A I am. But I guess in this regard you're  
 20 asking to my knowledge. And so, I guess, that –  
 21 are you asking my personal knowledge or as my  
 22 knowledge as a representative of the company?  
 23 Q All right. I appreciate that.  
 24 I am only examining you today in your  
 25 capacity as a 30(b)(6) witness.

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1 Dustin Norris  
 2 could have been something, but –  
 3 Q Okay. I'm just asking about your  
 4 knowledge, not what could have been.  
 5 All right. So we're going to use  
 6 March 1st, 2021, as the answer date.  
 7 Are you aware of any document that  
 8 HCMFA filed with the bankruptcy court prior to the  
 9 answer date that concerns or relates in any way to  
 10 the notes?  
 11 A I'm thinking if I'm aware.  
 12 Not that I'm aware of.  
 13 Q Are you aware – withdrawn.  
 14 Do you know what a "pleading" is, if I  
 15 use that phrase?  
 16 A I believe so. These are the answers that  
 17 we gave. The first answer, the amended answer,  
 18 and the second amended answer, that – I believe  
 19 those are the two pleadings. Is that correct?  
 20 Q You know what? I think my first question  
 21 was broad enough, because I just used the word  
 22 "document," so I'm going to let that sit.  
 23 Are you aware of any argument that  
 24 anybody ever made on behalf of HCMFA prior to the  
 25 answer date that concerned or related to any of

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1 Dustin Norris  
 2 A Okay. That makes sense. Okay.  
 3 Q And so if I use the phrase "you," just as  
 4 we did in the deposition notice, I'm really  
 5 referring to HCMFA; is that fair?  
 6 A That's fair.  
 7 Q Okay. So let me just ask the questions  
 8 again with that clarification.  
 9 Are you aware, in your capacity as the  
 10 30(b)(6) witness today, of any document that was  
 11 ever filed on behalf of HCMFA prior to the answer  
 12 date that concerns or relates to the notes?  
 13 A No.  
 14 Q Are you aware, in your capacity as the  
 15 HCMFA 30(b)(6) witness, of any argument that was  
 16 ever made to the Court prior to the answer date  
 17 that concerns or relates in any way to the notes?  
 18 A No.  
 19 Q Are you aware of – again, when I use the  
 20 phrase "you," I'm referring to HCMFA, just to  
 21 shorten these questions a little bit.  
 22 Are you aware of any statement that  
 23 was ever made on your behalf to the bankruptcy  
 24 court prior to the answer date that concerns or  
 25 relates in any way to the notes?

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1 Dustin Norris  
 2 A Not that I recall.  
 3 Q Okay. When did HCMFA first learn of the  
 4 existence of the notes?  
 5 A So HCMFA's position is that they learned  
 6 of them when they were demanded, or after they  
 7 were demanded. I don't even know that when we  
 8 received – or who they were sent to, but it was  
 9 after they were demanded.  
 10 Q Okay. And do you recall when they were  
 11 demanded?  
 12 A I don't have the exact date. If you could  
 13 remind me or show a document, that might be  
 14 helpful. I don't know if you have the demand, or  
 15 if that's one of the documents, but I don't  
 16 remember the specific date.  
 17 MR. MORRIS: Can we put Exhibit 1  
 18 up on the screen?  
 19 It's actually the complaint – the  
 20 original complaint, sir.  
 21 (Exhibit 1 tendered.)  
 22 BY MR. MORRIS:  
 23 Q If you go to Exhibit 3, do you see there's  
 24 a demand letter there?  
 25 A Yes.

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1 Dustin Norris  
 2 A I don't believe they did.  
 3 Q So it's fair to say that nobody on behalf  
 4 of HCMFA ever told any representative of Highland  
 5 that it was previously unaware of the existence of  
 6 the notes?  
 7 A Sorry. Can you repeat that one more time?  
 8 Q HCMFA never responded to this letter prior  
 9 to the commencement of the lawsuit, right?  
 10 A Not to my knowledge, didn't respond to  
 11 HCMLP on this.  
 12 Q Is there a reason why they didn't reach  
 13 out to Highland to let Highland know that it  
 14 disputed the existence of these notes?  
 15 A I don't know if there's a reason, but I do  
 16 know, during this time period, you'll recall,  
 17 December and January, leading up to the actual  
 18 demand – or the initial complaint, there was a  
 19 lot going on. We were almost in daily depositions  
 20 and court hearings. There was a hearing  
 21 injunction handed out against Jim. There was a  
 22 restraining order. There – TRO. There were  
 23 lawsuits against the advisers. And so there was a  
 24 lot going on, and I think this was put back in the  
 25 priority line.

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1 Dustin Norris  
 2 Q And you've seen that before, right?  
 3 A I have.  
 4 Q Okay. And are you – do you see that it  
 5 was sent to Mr. Waterhouse?  
 6 A Yes.  
 7 Q And Mr. Waterhouse was the treasurer of  
 8 HCMFA on December 3rd, 2020, correct?  
 9 A Correct.  
 10 Q Okay. So is it fair to say that HCMFA  
 11 knew of the existence of the notes on  
 12 December 3rd, 2020?  
 13 A It's safe to say that Frank Waterhouse  
 14 received this. I'm not sure the date exactly  
 15 when – when the company became aware. Frank,  
 16 yes, is an officer. He's also – the irony here,  
 17 he's CFO of the debtor who is demanding this, so  
 18 he's demanding it from himself. I know it's  
 19 coming from – from who is sending it, but at this  
 20 time, I don't know when Mr. Dondero or other  
 21 officers became aware of it. Sometime after  
 22 December 3rd.  
 23 Q Okay. Do you know if HCMFA ever responded  
 24 to this demand letter prior to the time the  
 25 complaint was filed on January 21st, 2021?

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1 Dustin Norris  
 2 Again, all of the compliance and legal  
 3 functions at this time, December 2020, were being  
 4 outsourced to HCMLP, and we were told they were  
 5 unable to help with anything that was inimical to  
 6 the debtor. And so there were no employees of  
 7 HCMFA that were legal compliance professionals,  
 8 and so this – this was – I guess – this is my  
 9 speculation – was put in the back of the line, or  
 10 further back from the actual litigation that they  
 11 were defending or working against the daily  
 12 depositions and coordinating.  
 13 Q Do you have any reason to believe, as you  
 14 sit here right now, that Mr. Waterhouse did not  
 15 receive this demand letter on or about  
 16 December 3rd, 2020?  
 17 A I don't know. I don't have any reason to  
 18 believe that, but I don't know.  
 19 Q Okay.  
 20 A And I don't recall what he testified to in  
 21 regard to receiving the demand, but we see here it  
 22 was sent to him. We can assume it got sent to  
 23 him.  
 24 Q Okay. Let me ask the question again, and  
 25 I would appreciate you listening carefully to my

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1 Dustin Norris  
 2 question.  
 3 As HCMFA's 30(b)(6) witness today,  
 4 does HCMFA contend that this letter was not  
 5 received by Mr. Waterhouse on or about  
 6 December 3rd, 2020?  
 7 MR. RUKAVINA: Well, that's not our  
 8 contention. We agree that it was received  
 9 on or about that date.  
 10 MR. MORRIS: Okay.  
 11 THE WITNESS: Yeah. That's –  
 12 yeah.  
 13 BY MR. MORRIS:  
 14 Q Okay. HCMFA actually knew about the notes  
 15 just weeks after they were signed; correct?  
 16 MR. RUKAVINA: Objection; form.  
 17 THE WITNESS: So the debtor  
 18 employees who created the notes knew about  
 19 them, but it was not knowledge of HCMFA.  
 20 Those were all Highland Capital  
 21 Management, LP, employees.  
 22 BY MR. MORRIS:  
 23 Q So it's your testimony that HCMFA had no  
 24 knowledge of the existence of the notes in  
 25 June 2019; is that correct?

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1 Dustin Norris  
 2 sure that HCMFA's audited financial statements are  
 3 true, accurate, and reliable?  
 4 A Him and his team, yeah. We actually –  
 5 that's what we rely on them for.  
 6 Q And did you rely on him not only in his  
 7 capacity as an employee of Highland, but in his  
 8 capacity as the treasurer of HCMFA?  
 9 A Yeah, he was – let's take the first –  
 10 as a – in his capacity under the shared services  
 11 agreement, okay, doing accounting, books and  
 12 records, audited – audit support, yes, we relied  
 13 on him in that capacity. And he also, as an HCMLP  
 14 employee, served as a treasurer of HCMFA. In that  
 15 role, we would expect him to oversee the  
 16 financials.  
 17 MR. MORRIS: Okay. And move to  
 18 strike.  
 19 BY MR. MORRIS:  
 20 Q And I'm going to ask you very  
 21 specifically: As HCMFA's representative today,  
 22 did Frank Waterhouse have a duty as the treasurer  
 23 of HCMFA to make sure that HCMFA's audited  
 24 financial statements were true and accurate?  
 25 A That – very specific from the treasurer

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1 Dustin Norris  
 2 A June 2019.  
 3 Correct.  
 4 Q As the executive vice president of HCMFA,  
 5 have you ever reviewed HCMFA's audited financial  
 6 statements?  
 7 A I have not.  
 8 Q Is there anybody on behalf of HCMFA who is  
 9 charged with the responsibility of reading HCMFA's  
 10 audited financial statements?  
 11 A Yeah. We – again, the key here is we  
 12 outsourced finance, accounting, back-office  
 13 functions. It includes financial statement  
 14 preparation. The treasurer of HCMFA is an HCMLP  
 15 employee, Frank Waterhouse, at that time, and at  
 16 all times that we're talking about. And so with  
 17 we – and Frank is a professional, and his team  
 18 are professionals, right? We outsource to an  
 19 accounting group to prepare and oversee, work with  
 20 the auditors in preparation of those financials.  
 21 And so they were tasked with that. And we relied  
 22 on them. And there was not a specialist during  
 23 this time period that did that.  
 24 Q Does Frank Waterhouse have any  
 25 responsibility, as the treasurer of HCMFA, to make

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1 Dustin Norris  
 2 role, I would say the treasurer role was to  
 3 oversee the financial aspects of the advisers.  
 4 Q And was one of those aspects HCMFA's  
 5 audited financial statements?  
 6 A As – yeah. And he was – again, I'll  
 7 reiterate, he was the CFO of Highland who was  
 8 tasked with creating the financial statements for  
 9 the advisers.  
 10 MR. MORRIS: Okay. I'm again going  
 11 to move to strike.  
 12 BY MR. MORRIS:  
 13 Q I'm not asking about his role as CFO of  
 14 Highland. I'm limiting it strictly to his role as  
 15 the treasurer of HCMFA.  
 16 A And I don't have –  
 17 Q Did Frank – let me ask my question.  
 18 Is any officer of HCMFA responsible  
 19 for making sure that HCMFA's audited financial  
 20 statements are true and accurate?  
 21 A I don't know, but I would assume – and I  
 22 don't want to make assumptions here as the  
 23 representative – but I would assume that the  
 24 treasurer would have that role.  
 25 Q Okay. And what is your assumption based

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1 Dustin Norris  
 2 on?  
 3 A Based on the understanding of what a  
 4 treasurer role would be. But I – I don't have  
 5 any – I don't have any knowledge, I'm not  
 6 representing that we have any roles and  
 7 responsibilities or defined procedures that the  
 8 treasurer does this, that, or the other.  
 9 Q Okay. Have you – as you sit here right  
 10 now, have you ever seen HCMFA's audited financial  
 11 statements for the period ending December 31st,  
 12 2018?  
 13 A I saw them in the materials that were  
 14 provided in your schedules, I believe.  
 15 Q Okay. Let's –  
 16 A That was the first time.  
 17 Q Let's take a quick look at it.  
 18 MR. MORRIS: If we could put up on  
 19 the screen the document that's been marked  
 20 Exhibit 45.  
 21 (Exhibit 45 tendered.)  
 22 BY MR. MORRIS:  
 23 Q Okay. And do you see that this is the  
 24 first page of HCMFA's audited financial statements  
 25 for the period ending December 31st, 2018?

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1 Dustin Norris  
 2 financials, which –  
 3 Q Yeah. Yeah. Let's –  
 4 A So I'm assuming that's the –  
 5 Q Let's scroll down just a little bit.  
 6 You can see that the next page is  
 7 HCMFA's balance sheet. Do you see that?  
 8 A I do.  
 9 Q Okay.  
 10 MR. MORRIS: Can we go to  
 11 "Subsequent Events"? I think it's  
 12 Page 17.  
 13 BY MR. MORRIS:  
 14 Q Have you seen this page of HCMFA's audited  
 15 financial statements before?  
 16 A Just in preparation for this.  
 17 Q Do you understand that in the "Subsequent  
 18 Events" section, the notes are described in the  
 19 audited financial statements?  
 20 A There is a reference to promissory notes  
 21 in aggregate of \$7.4 million, yes.  
 22 Q And those are the two notes that Highland  
 23 is suing on; correct?  
 24 A I would assume that's the case, because  
 25 the dollar amounts line up. But I don't have the

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1 Dustin Norris  
 2 A I do.  
 3 MR. MORRIS: Okay. And if we could  
 4 just scroll, I think, to the third page.  
 5 BY MR. MORRIS:  
 6 Q Do you see that it's signed by  
 7 PricewaterhouseCoopers on June 3rd, 2019?  
 8 A I see that the audit opinion is signed by  
 9 them, yes.  
 10 Q Correct. And – and you're aware that  
 11 PricewaterhouseCoopers was the outside auditor  
 12 retained by HCMFA to conduct the audit of HCMFA's  
 13 financial statements; correct?  
 14 A Given that they gave an opinion, yes.  
 15 Q Okay. And you have no reason to believe  
 16 that the document that's up on the screen is  
 17 anything other than HCMFA's audited financial  
 18 statements for the period ending December 31st,  
 19 2018, do you?  
 20 And we're happy – I'm happy to scroll  
 21 through whatever you need to see.  
 22 A Yeah. And there they're distinguishing –  
 23 you have an audit opinion and having audited  
 24 financials, I assume that you have all that is  
 25 here. You showed me the first page of the

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1 Dustin Norris  
 2 backup, but I would assume that's the case.  
 3 Q And not only do the dollar amounts line  
 4 up, but do you see that the statement in  
 5 "Subsequent Events" specifically identifies the  
 6 notes as having been issued in the year 2019?  
 7 A Yes.  
 8 Q And are you aware of any notes that  
 9 anybody in the world contends were signed by HCMFA  
 10 between January 1st, 2019, and June 3rd, 2019,  
 11 other than the two notes that Highland is suing  
 12 on?  
 13 A No.  
 14 Q Okay. So can you conclude, as HCMFA's  
 15 30(b)(6) witness, that the notes that are  
 16 described in the subsequent events are the very  
 17 notes that are the subject of the pending lawsuit?  
 18 A That appears to be the case.  
 19 Q Okay. And so it's also fair to say, then,  
 20 that HCMFA does not dispute that its own audited  
 21 financial statements that were the subject of a  
 22 June 3rd, 2019, opinion by PricewaterhouseCoopers  
 23 disclosed the existence of the notes at issue;  
 24 correct?  
 25 A No. We don't dispute that that was

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1 Dustin Norris  
 2 included in the financial statements. You know,  
 3 I – I think we're going to get into it in our  
 4 affirmative defenses, but we dispute that the  
 5 notes were actually valid notes, and we would say  
 6 that this was an error. These should not have  
 7 been included, but were included in good faith by  
 8 the accounting team who thought that they were  
 9 valid notes.  
 10 Q Okay.  
 11 A So –  
 12 MR. MORRIS: I move to strike  
 13 everything other than the first portion of  
 14 your answer that was responsive to my  
 15 question.  
 16 BY MR. MORRIS:  
 17 Q HCMFA does not dispute that it received  
 18 \$2.4 million from Highland on May 2nd, does it?  
 19 A No.  
 20 Q HCMFA does not dispute that it received  
 21 \$5 million on May 3rd, 2019, does it?  
 22 A No.  
 23 Q Let's just confirm that, if we can.  
 24 MR. MORRIS: Can we put on the  
 25 screen a document that's been marked as

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1 Dustin Norris  
 2 A Is this HCMFA's bank statement or is this  
 3 HCMLP's?  
 4 Q No. It's HCMLP's.  
 5 A Okay. It just says "Highland Capital  
 6 Management," and I'm assuming it lines up – I'm  
 7 assuming this is the transfer, but –  
 8 Q Okay.  
 9 A – I can't confirm an entity. But we're  
 10 not denying that there was cash received those  
 11 dates from HCMLP.  
 12 Q Okay. And are you aware –  
 13 MR. MORRIS: We can take this down  
 14 now.  
 15 BY MR. MORRIS:  
 16 Q Do you recall that Topic Number 10 asks  
 17 for a witness who can testify about the accounting  
 18 of these transfers?  
 19 A Uh-huh. Yup.  
 20 Q Are you prepared to testify on Topic  
 21 Number 10?  
 22 A Yes.  
 23 Q Can you tell me how HCMFA accounted for  
 24 these payments on its books and records?  
 25 A I can, yeah.

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1 Dustin Norris  
 2 Exhibit 147?  
 3 (Exhibit 147 tendered.)  
 4 BY MR. MORRIS:  
 5 Q Okay. Do you see that this is – or at  
 6 least this appears to be a bank account statement?  
 7 A Yes. BBVA Compass is a bank, so I'll take  
 8 your representation it's a statement.  
 9 MR. MORRIS: All right. And if we  
 10 can just scroll down.  
 11 All right. Stop right there.  
 12 BY MR. MORRIS:  
 13 Q Do you see that there's a reference on  
 14 May 2nd to a 2.4-million-dollar transfer?  
 15 A I do.  
 16 Q Okay. And is that consistent with your  
 17 testimony just now that on May 2nd, Highland  
 18 transferred \$2.4 million to HCMFA?  
 19 A That's correct.  
 20 Q And lower on the page, the statement shows  
 21 a transfer of \$5 million on May 3rd; correct?  
 22 A Yes.  
 23 Q And that's the payment that HCMFA  
 24 acknowledged – acknowledges receiving from  
 25 Highland on that day; correct?

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1 Dustin Norris  
 2 So my understanding of the company's  
 3 position is that – and – and it may be helpful  
 4 to provide some additional color leading up to the  
 5 accounting. I don't know if we want to address  
 6 that later in our affirmative defenses, if you  
 7 have a preference there.  
 8 Q I'd just like you to – maybe it's my  
 9 question, but I just want you to focus on my  
 10 question.  
 11 A Uh-huh.  
 12 Q And that is: First, do you know how HCMFA  
 13 accounted for these two payments in its books and  
 14 records?  
 15 A Yeah. So the HCMLP employees who were  
 16 tasked with creating books and records of the  
 17 adviser, the accounting team recorded, we – we –  
 18 our position is that is an incorrect recording of  
 19 a payable to HCMLP. And so there was a payable  
 20 booked on the balance sheet of HCMFA by the HCMLP  
 21 accounting team.  
 22 MR. MORRIS: Okay. I'm going to  
 23 move to strike.  
 24 BY MR. MORRIS:  
 25 Q I – I'd appreciate not having the

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1 Dustin Norris  
 2 commentary. Your counsel can ask those questions  
 3 or if it's responsive to a question. I'm just  
 4 asking a very simple question.  
 5 A Yup.  
 6 Q How – how did HCMFA record these payments  
 7 on its books and records?  
 8 A Yeah. My understanding is they recorded a  
 9 payable to HCMLP, a liability.  
 10 Q And do you know when HCMFA first  
 11 discovered that the payments were booked on its  
 12 books and records as a liability?  
 13 A Our position is that that was revealed  
 14 through after the – sorry – after the demand.  
 15 And as we began to get additional information –  
 16 particularly, and I would refer you to  
 17 Mr. Sauter's declaration, our amended response,  
 18 and our second amended response that was filed  
 19 yesterday regarding each of those time periods.  
 20 But it was after the demand we found out how it  
 21 was booked.  
 22 Q Okay. So just to simplify this: HCMFA's  
 23 books and records recorded the transfers on  
 24 May 2nd and May 3rd as liabilities from HCMFA to  
 25 Highland; correct?

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1 Dustin Norris  
 2 A I'm not aware of how it's been treated  
 3 since then.  
 4 Q Okay.  
 5 MR. RUKAVINA: And, John, no  
 6 urgency, but find some time in the near  
 7 future for the restroom break. The  
 8 morning coffee is working its magic.  
 9 MR. MORRIS: Happy to do it right  
 10 now, Davor.  
 11 THE WITNESS: I can use that, too.  
 12 I'm almost through my water bottle.  
 13 MR. MORRIS: All right. So, look,  
 14 it's 12:05. Let's just come back at 12:15  
 15 or 11:15.  
 16 THE WITNESS: Thank you.  
 17 MR. MORRIS: Thanks so much.  
 18 (Recess from 11:05 a.m. to 11:16 a.m. CST)  
 19 BY MR. MORRIS:  
 20 Q To the best of your knowledge, has HCMFA  
 21 ever changed its books and records in order to  
 22 reverse the booking of the payments that were made  
 23 by Highland in May from liabilities to something  
 24 else?  
 25 A I'm not aware of how the accounting

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1 Dustin Norris  
 2 A So my understanding is the audited  
 3 financials recorded in a subsequent event – you  
 4 showed me that – they recorded a subsequent  
 5 event. The balance sheet as of 12/31/2018 wasn't  
 6 amended because it was a subsequent event. But on  
 7 their books and records at that time, or  
 8 subsequent to that, they recorded a liability.  
 9 Q And – and do you know if that liability  
 10 was recorded contemporaneously in May of 2019?  
 11 A I don't know.  
 12 Q But it's – it's HCMFA's position that,  
 13 notwithstanding the recording of the liability on  
 14 it's books and records, that HCMFA didn't learn of  
 15 that fact until after the demand letter was sent  
 16 in December of 2020.  
 17 Do I have that right?  
 18 A Correct.  
 19 Q Okay. Have there been any changes in  
 20 HCMFA's books and records since it learned of the  
 21 promise – of the existence of the promise –  
 22 withdrawn.  
 23 Has – has HCMFA changed its books and  
 24 records after learning that the payments were  
 25 recorded as liabilities?

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1 Dustin Norris  
 2 entries have been done since then, but – yeah,  
 3 I'm not aware.  
 4 Q Okay. But you'll – you'll agree that the  
 5 accounting for these two payments was among the  
 6 30(b)(6) topics, correct, Number 11 – Number 10?  
 7 A Yes.  
 8 Q And as the 30(b)(6) witness for HCMFA, can  
 9 you confirm that, to the best of your knowledge,  
 10 those payments were booked as liabilities and the  
 11 booking of those payments as – as liabilities has  
 12 not changed?  
 13 A To the best of my knowledge, they were  
 14 booked as liabilities, and I don't know how they  
 15 have been treated. There's not been a year-end  
 16 audit for 2021, and I'm sure the accountants and  
 17 auditors will determine based on current facts and  
 18 circumstances how those will be reported.  
 19 Q Okay. But as of today, you have no  
 20 knowledge that the booking of those payments as  
 21 liabilities has ever been changed; correct?  
 22 A Those – there's no financial statements  
 23 that are prepared, I believe, intra-year, during  
 24 the year, for audited purposes. And so, you know,  
 25 that – that would be, I'm sure, determined based

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1 Dustin Norris  
 2 on any audit needs.  
 3 Q Does HCMFA maintain an accounts payable  
 4 ledger?  
 5 A I'm sure it does.  
 6 Q Did you do anything to try to ascertain  
 7 whether or not these notes appear as liabilities  
 8 on the accounts payable ledger?  
 9 A As current accounts payable ledger?  
 10 Q Yeah.  
 11 A No.  
 12 Q Did you – other than the audited  
 13 financial statements, did you take any steps to  
 14 ascertain how these payments were recorded in  
 15 HCMFA's books and records, or is – or is it only  
 16 on the audited financial statements?  
 17 A So at the time that they were recorded, we  
 18 know they were recorded as liabilities on the  
 19 books and records.  
 20 Q And when you say that it was recorded as a  
 21 liability in the books and records, where in the  
 22 books and records was it recorded as a liability?  
 23 A Meaning on the balance sheet?  
 24 Q Okay. So the balance sheet is one place;  
 25 is that right?

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1 Dustin Norris  
 2 Q Yes.  
 3 A I – I would refer you to the testimony of  
 4 Mr. Dondero and Mr. Waterhouse, who both testified  
 5 to this; Mr. Dondero that it was compensation, and  
 6 that Frank testified in his deposition that he  
 7 don't – didn't remember Mr. Dondero saying it was  
 8 a loan, and that Mr. Dondero told him to get the  
 9 money from Highland. And so it's – it's – that  
 10 is on the record and in the record.  
 11 But in HCMFA's other records, we have  
 12 the president of HCMLP, Jim Dondero, who made that  
 13 transfer and has said that that is for  
 14 compensation.  
 15 So there is – but there is – I  
 16 wouldn't – I would be surprised to see some kind  
 17 of a settlement agreement or invoice with – to  
 18 affiliates.  
 19 MR. MORRIS: Okay. I move to  
 20 strike.  
 21 BY MR. MORRIS:  
 22 Q And my answer – my question is really  
 23 simple.  
 24 Is there anything in HCMFA's books and  
 25 records that reflects its position that these

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1 Dustin Norris  
 2 A Yes. We record liabilities on the balance  
 3 sheet.  
 4 Q Okay. Did HCMFA complete its audit for  
 5 2019?  
 6 A I don't – not that I'm aware of. I don't  
 7 believe they had an audit for 2019.  
 8 Q Okay. Now, HCMFA contends that the  
 9 payments were – should not have been booked as a  
 10 loan because they were supposed to be compensation  
 11 for the error that Highland made in connection  
 12 with the NAV error; correct?  
 13 A Correct.  
 14 Q Okay. Did HCMFA ever issue an invoice or  
 15 a bill of any kind to Highland?  
 16 A Not that I'm aware of.  
 17 Q Okay. Is there anything in HCMFA's books  
 18 and records that reflects its position that the  
 19 payments should not have been billed as  
 20 liabilities, but they should have been billed as  
 21 income?  
 22 A As compensation?  
 23 Q Yeah.  
 24 A Yes.  
 25 Anything in their records?

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1 Dustin Norris  
 2 payments were supposed to be made as compensation  
 3 rather than in the form of loans?  
 4 A I – I would say that the pleadings are a  
 5 part of our books and records now. I would say  
 6 depositions. And within that, it is well  
 7 documented.  
 8 Q Okay. Let me ask a different question  
 9 then.  
 10 Remember we were using the answer date  
 11 as being March 1st, 2021.  
 12 A Correct.  
 13 Q Is there anything in HCMFA's books and  
 14 records that was created prior to March 1st, 2021,  
 15 that corroborates HCMFA's position that the  
 16 payments were intended to be compensation and not  
 17 in the form of a loan?  
 18 A Yeah, and I would, again, refer you to  
 19 DC's – what do you call it – declaration. That  
 20 prior to that, we didn't have access to – to,  
 21 largely, our books and records as that was  
 22 outsourced to Highland Capital Management, LP, and  
 23 to their employees, legal, compliance, and  
 24 accounting. So our position is we did not have  
 25 anything at that point related to this agreement.

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1 Dustin Norris  
 2 MR. MORRIS: Okay. I move to  
 3 strike.  
 4 BY MR. MORRIS:  
 5 Q And listen carefully to my question.  
 6 Is HCMFA aware of anything that was  
 7 created prior to the answer date that corroborates  
 8 its position today that the payments were intended  
 9 to be treated as compensation rather than a loan?  
 10 A I – I think as far as books and records  
 11 go, we have NAV error memos, we have communication  
 12 with the SEC. Right?  
 13 There's – there is a lot of  
 14 information related to the services that were  
 15 performed under the shared services agreement,  
 16 were for valuation purposes that Highland had  
 17 created and was responsible for the valuation  
 18 process, and that is a host of documents that are  
 19 in the record, yes.  
 20 MR. MORRIS: Okay. I – I move to  
 21 strike.  
 22 BY MR. MORRIS:  
 23 Q I'm asking about accounting. Maybe it's  
 24 my fault. Okay? I'll – I'll take responsibility  
 25 for this. I'm asking as a matter of accounting.

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1 Dustin Norris  
 2 accounting purposes. I – I do have an accounting  
 3 background, but I haven't done accounting in a  
 4 long time, and I'm not an expert in adviser  
 5 financial statements. So I would say I don't  
 6 have – and I guess – I guess that – stepping  
 7 back and answering on behalf of the company here,  
 8 I don't have a knowledge of how that would be  
 9 recorded for income statement purposes.  
 10 Q Okay.  
 11 A But it would – it would be compensation  
 12 that would be reported –  
 13 Q Okay.  
 14 A – somewhere in the financial statements.  
 15 Q So it's your testimony today, as HCMFA's  
 16 30(b)(6) witness, that HCMFA was unaware that its  
 17 audited financial statements disclosed these notes  
 18 until after the lawsuit was commenced.  
 19 Do I have that right?  
 20 A That's correct.  
 21 Q And it's your position today, as HCMFA's  
 22 30(b)(6) witness, that HCMFA was unaware that the  
 23 payments that were made by Highland were booked as  
 24 liabilities until sometime after the lawsuit was  
 25 commenced; correct?

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1 Dustin Norris  
 2 I'm still on 30(b)(6) Topic Number 10.  
 3 Is there anything in HCMFA's books and  
 4 records that was created before the answer date  
 5 that shows that the payment should have been  
 6 accounted for as compensation rather than as a  
 7 loan?  
 8 A As far as an accounting record, I wouldn't  
 9 expect there to be, because the accountant  
 10 function was outsourced to HCMLP, and – and I  
 11 would refer you to our latest response and our  
 12 amended response of – of what was discovered and  
 13 found throughout the process here.  
 14 The accountants recorded a liability  
 15 and they thought it should be liability. And so,  
 16 no, there wasn't anything, to my knowledge, prior  
 17 to that that was in the accounting books and  
 18 records. And I – you know, I'm not surprised  
 19 there wasn't, because of the facts that you'll –  
 20 you'll see in our amended answers.  
 21 Q Okay. Do you know whether, if it was  
 22 intended to be compensation, that HCMFA's income  
 23 statement should have shown the inflow of the  
 24 \$7.4 million?  
 25 A I don't know how it would be reported for

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1 Dustin Norris  
 2 A Yes, that's correct. The accounting  
 3 function was outsourced to HCMLP.  
 4 Q Okay. And there's – was there anybody –  
 5 was there any officer of HCMFA who had  
 6 responsibility for reviewing HCMFA's balance  
 7 sheet?  
 8 A I believe I already answered this earlier.  
 9 Q I actually asked the question on the  
 10 audited financial statements.  
 11 A Okay.  
 12 Q Now I'm going to ask specifically. Is  
 13 there anybody who served as an officer of HCMFA  
 14 who had the responsibility of making sure that  
 15 HCMFA's balance sheets were true and accurate?  
 16 A Yes. So Frank Waterhouse and his team,  
 17 Frank was the named treasurer of HCMFA, and his  
 18 role at HCMLP, as a service provider, would have  
 19 had that responsibility along with his team.  
 20 Q Okay. Let's go to the next topic,  
 21 Topic 11. Do you see Topic 11 refers to  
 22 "communications in 2020 with any retail board –  
 23 A Yes.  
 24 Q – concerning the amounts due and owing to  
 25 Highland"?



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1 Dustin Norris  
 2 A Yes, I do.  
 3 Q Okay. HCMFA is a financial advisory firm;  
 4 correct?  
 5 A It is.  
 6 Q And it provides advisory services to  
 7 certain funds; correct?  
 8 A It does.  
 9 Q And those advisory services are provided  
 10 pursuant to written agreements; correct?  
 11 A They are.  
 12 Q And those agreements are subject to annual  
 13 review; correct?  
 14 A They are.  
 15 Q And those agreements the principal source  
 16 of HCMFA's revenue?  
 17 A Yes, I believe so.  
 18 Q Okay. It's among the most important  
 19 contracts HCMFA has; correct?  
 20 A Yes.  
 21 Q In fact, it's the reason for HCMFA's  
 22 existence, is that fair, is to serve the funds?  
 23 A Largely, yes.  
 24 Q And the funds are managed by boards;  
 25 correct?

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1 Dustin Norris  
 2 performance of the funds, how they performed  
 3 during the year. We hire an outside third party  
 4 to come in and talk about performance and fees. I  
 5 help provide insight, talk about -- as I oversee  
 6 the sales and business development of the firm, I  
 7 talk about inflows and outflows, which help --  
 8 helps impact the economies of scale funds. We  
 9 have certain funds that are shrinking, some that  
 10 are growing. So talking about future, talking  
 11 about mergers, talking about different aspects of  
 12 that.  
 13 And so my -- mine is more of the sales  
 14 business development function and regarding the  
 15 services. One of the things that we do as the  
 16 adviser is we, again -- they have to determine  
 17 that the quality of services we're providing are  
 18 sufficient, and so they have to get comfortable  
 19 with the various functions.  
 20 Q Okay. Who else on behalf of HCMFA  
 21 participated in the 15(c) analysis that you've  
 22 just described?  
 23 A Yeah, so as -- again, going back to the  
 24 shared services agreement, I point you to the  
 25 services that are provided by HCMLP. In large

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1 Dustin Norris  
 2 A Correct.  
 3 Q And can we refer to the boards that manage  
 4 the funds that are served by the advisers as "the  
 5 retail board"?  
 6 A Yes.  
 7 Q Okay. Did you participate -- are you  
 8 aware that in the fall of 2020 the retail board  
 9 conducted a review in connection with the  
 10 determination as to whether or not to renew  
 11 HCMFA's contracts?  
 12 A I am aware, yes.  
 13 Q Did you participate in that process?  
 14 A I did, in some -- in some parts, yes.  
 15 Q What parts did you participate in?  
 16 A Yeah, so I attended the board meetings in  
 17 relation to -- we call this the 15(c) analysis.  
 18 And so it's Section 15(c) of the 1940 Act requires  
 19 the board to determine and renew the contracts on  
 20 an annual basis. And so they look at a number of  
 21 factors. And there's, I believe, certain case law  
 22 that dictates the things that they should look at:  
 23 Quality of services, performance, fees.  
 24 And so my aspect -- the biggest part  
 25 of my contribution is to talk about the

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1 Dustin Norris  
 2 part, this process is managed and run by the HCMLP  
 3 employees as part of that shared services. Legal  
 4 and compliance help draft the memos. They are --  
 5 Q And I'm going to interrupt you, and I  
 6 really apologize for doing that. I'm not asking  
 7 about HCMLP.  
 8 A Yeah.  
 9 Q These are -- these are HCMFA's contracts;  
 10 correct?  
 11 A They are.  
 12 Q And they're the most important contracts  
 13 that HCMFA has; correct?  
 14 A Correct.  
 15 Q Okay. So who -- which officers of HCMFA  
 16 are involved in the 15(c) analysis?  
 17 A Yeah, one -- going back to -- to clarify  
 18 on your -- you know, this is the most important  
 19 thing, you know, that we have, it is, and as such  
 20 we have -- a lot of those functions, and to talk  
 21 about HCMFA's role, we have front-office  
 22 investment professionals who join those meetings  
 23 to talk about the funds and performance. The  
 24 aspects of the adviser that we provide and source  
 25 is the management of the funds: The performance,

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1 Dustin Norris  
 2 the investment selection. And then we bring in  
 3 HCMLP to provide the various other services. And  
 4 so they are a huge part of that. To say that –  
 5 yeah, it's not – they are legal, compliance,  
 6 accounting, finance, back office, settlement.  
 7 Those are all functions that they're providing.  
 8 Q I know – I appreciate that they're  
 9 functions that they play under the shared services  
 10 agreement.  
 11 A Yup.  
 12 Q Let me – let me move on.  
 13 A Okay. Go ahead.  
 14 Q In October 2020, HCMFA informed the retail  
 15 board that HCMFA was obligated to pay Highland the  
 16 outstanding principal amount due under the notes;  
 17 correct?  
 18 MR. RUKAVINA: Objection; form.  
 19 THE WITNESS: Yeah, the  
 20 obligated – I would – sorry. Can you  
 21 ask the question again?  
 22 BY MR. MORRIS:  
 23 Q Sure.  
 24 In October 2020, HCMFA informed the  
 25 retail board of the existence of the notes;

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1 Dustin Norris  
 2 Q And this is the report that the advisers  
 3 gave to the retail board in October 2020 as part  
 4 of the 15(c) analysis; correct?  
 5 A Yes, working closely with HCMLP in the  
 6 accounting, compliance, and legal function did  
 7 draft this.  
 8 Q Okay. And who – who on behalf of the  
 9 advisers authorized the sending of this memo?  
 10 A I don't know that there's a formal  
 11 authorization. Lauren Thedford, who was the  
 12 secretary of the advisers and an HCMLP employee,  
 13 helped prepare the memo along with the rest of the  
 14 legal and compliance team. Thomas Sargent was  
 15 probably involved.  
 16 MR. MORRIS: Okay. I'm going to  
 17 move to strike.  
 18 BY MR. MORRIS:  
 19 Q I don't want to know who was probably  
 20 involved. I actually asked a very specific  
 21 question, and if you don't know, please just say  
 22 you don't know.  
 23 Who on behalf of the advisers  
 24 authorized the sending of this memo to the retail  
 25 board?

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1 Dustin Norris  
 2 correct?  
 3 A Not that I'm aware of. If you have  
 4 something you could – you know, a document or  
 5 something that you're thinking of?  
 6 Q So you participated in the 15(c) process,  
 7 and you have no knowledge of HCMFA informing the  
 8 retail board of the existence of the notes?  
 9 A Of these notes? No. And I would say that  
 10 there was a question from the retail board posed  
 11 to the advisers, which we passed along to HCMLP,  
 12 which included Lauren Thedford as an HCMLP  
 13 employee and Frank Waterhouse, is: Were there any  
 14 liabilities to – owed to Highland?  
 15 Q So let's take a look – I'm sorry. Go  
 16 ahead.  
 17 A No, go ahead.  
 18 Q I was going to say, let's take a look at  
 19 that.  
 20 MR. MORRIS: So if we could put up  
 21 on the screen Exhibit 59.  
 22 (Exhibit 59 tendered.)  
 23 BY MR. MORRIS:  
 24 Q Have you seen this document before, sir?  
 25 A I have.

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1 Dustin Norris  
 2 A I don't know.  
 3 Q Did anybody on behalf of the advisers ever  
 4 suggest that this memo was wrong or inaccurate in  
 5 any way to the best of your knowledge?  
 6 A At that time? Is that what you mean?  
 7 Q Yes.  
 8 A No, not – not to my knowledge.  
 9 Q Okay. When did you see this memo for the  
 10 first time?  
 11 A I may have been copied on it at the time.  
 12 I don't remember if I read it, but I did review  
 13 it – and actually, I didn't review the whole  
 14 memo. I reviewed the one email that was related  
 15 to the note payable in this. So I don't know that  
 16 I read the whole memo.  
 17 Q So – so –  
 18 MR. MORRIS: Can we see how long  
 19 the memo is?  
 20 BY MR. MORRIS:  
 21 Q So it's two pages, and it's got some  
 22 charts; is that fair?  
 23 A That's fair.  
 24 Q And in October 2020, you were the  
 25 executive vice president of every single entity

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1 Dustin Norris  
 2 that this email is being sent to and from;  
 3 correct?  
 4 A I'm looking at the entities.  
 5 I'm executive vice president of most  
 6 of the entities.  
 7 Q Okay. You're the executive vice president  
 8 of each of the entities that are sending this  
 9 memo; correct?  
 10 A No. Not NexPoint Securities.  
 11 Q I appreciate that. Thank you for the  
 12 clarification.  
 13 Did you review this before it was  
 14 sent?  
 15 A I don't remember.  
 16 Q Did you take any steps to make sure that  
 17 it was accurate?  
 18 A Probably not. And that wouldn't have been  
 19 my function. We had a legal and compliance team  
 20 that was – through the shared services agreement  
 21 that prepared memos. This is going to the board.  
 22 That would have all obviously gone through legal  
 23 and compliance. It wouldn't have been my  
 24 function.  
 25 Q Did anybody who served as an officer or

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1 Dustin Norris  
 2 HCMFA to make sure that this report was true and  
 3 accurate before it was sent to the retail board?  
 4 A I don't know of any function or  
 5 requirement of his role as treasurer of HCMFA that  
 6 he was responsible for reviewing 15(c) memos prior  
 7 to going to the board.  
 8 Q And other than Lauren Thedford, you can't  
 9 identify any officer or employee of HCMFA who had  
 10 any responsibility to make sure that this report  
 11 was true and accurate before it was sent; is that  
 12 correct?  
 13 A No. And I can't – and I would, again, go  
 14 back to legal. And this is a memo that is going  
 15 to the board and is a legal and compliance  
 16 function that would have been provided services by  
 17 HCMLP. And that was always the case. Those  
 18 employees, for years, have provided the  
 19 legal/compliance support of memos of the 15(c)  
 20 process and the support for everything that went  
 21 into it.  
 22 MR. MORRIS: Okay. Move to strike.  
 23 BY MR. MORRIS:  
 24 Q Do you know if Jim Dondero reviewed this  
 25 before it was sent?

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1 Dustin Norris  
 2 employee of HCMFA have any responsibility to make  
 3 sure that this memo was true and accurate before  
 4 it was sent to the retail board?  
 5 A Lauren Thedford was the secretary of the  
 6 advisers and the funds, and I believe this has to  
 7 do with – and depending on the material, I think  
 8 this has to do with the note, and other things.  
 9 So the finance team, Frank Waterhouse and his team  
 10 at HCMLP, would have been supplying those answers.  
 11 Q Okay. And why do you keep saying Frank  
 12 Waterhouse at HCMLP instead of Frank Waterhouse as  
 13 the treasurer of the entity that's sending this  
 14 memo?  
 15 A Because Frank was the CFO of Highland who  
 16 was responsible for the accounting, finance,  
 17 back-office functions of these funds. And the  
 18 answer – the adviser did not have that  
 19 information, and intentionally hired HCMLP to  
 20 provide that function. And so that is how it was  
 21 viewed. Those were HCMLP employees, and that was  
 22 under the shared services agreement.  
 23 Q Is it your testimony as the HCMFA 30(b)(6)  
 24 witness that Frank Waterhouse did not have any  
 25 responsibility in his capacity as the treasurer of

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1 Dustin Norris  
 2 A I don't know for sure, but I highly doubt.  
 3 He was never, to my knowledge, involved in  
 4 drafting or reviewing 15(c) memos.  
 5 Q Okay. You'll agree that this memo was  
 6 sent by the advisers in response to the retail  
 7 board's questions; correct?  
 8 A Correct.  
 9 Q And you'll agree –  
 10 A And actually, let me – let me correct  
 11 that.  
 12 It was from the advisers. I believe  
 13 that HCMLP employees sent it, getting back to –  
 14 it was sent by – technicality, but I believe  
 15 Lauren Thedford would have sent this.  
 16 Q And why do you say that she sent it in her  
 17 capacity as an HCMLP employee rather than as the  
 18 secretary of the entity that's actually the author  
 19 of the memo?  
 20 A Because that was the function that they  
 21 were providing as part of the shared services  
 22 agreement. And I – yeah. That was what – she's  
 23 part of the legal team at HCMLP, and that was the  
 24 service she was providing. We didn't have a legal  
 25 and compliance function at HCMFA.

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1 Dustin Norris  
 2 Q Okay.  
 3 MR. MORRIS: Can we scroll down to  
 4 Question 2, please?  
 5 BY MR. MORRIS:  
 6 Q Have you seen Question 2 before?  
 7 A Yes.  
 8 Q Do you have an understanding of what was  
 9 being requested by the retail board in Question  
 10 Number 2?  
 11 A Yes. They are asking for amounts  
 12 currently payable or due in the future to HCMLP by  
 13 HCMFA or NexPoint Advisors.  
 14 Q And – and did the advisers report to the  
 15 retail board in October 2020 that, quote,  
 16 "\$12,286,000 remains outstanding to HCMLP from  
 17 HCMFA"?  
 18 A It says it right there. That's in the  
 19 memo.  
 20 Q Okay.  
 21 A And I would note that came from Frank  
 22 Waterhouse and his team, that information, the  
 23 accounting department at HCMLP.  
 24 MR. MORRIS: Okay. I move to  
 25 strike everything after the portion of

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1 Dustin Norris  
 2 can point to it, then I can take your  
 3 representation. But I don't remember that.  
 4 Q All right. So did anybody acting on  
 5 behalf of HCMFA – withdrawn.  
 6 Did any officer of – or employee of  
 7 HCMFA do anything to make sure the information in  
 8 this response was true and accurate before it was  
 9 sent to the retail board?  
 10 A We received it from the individuals  
 11 responsible. And there was no – you know, there  
 12 was no reason to doubt that it was incorrect.  
 13 Right? These were professionals. We were relying  
 14 on them. This is Frank Waterhouse, Dave Klos,  
 15 Kristen. We anticipated this would be accurate.  
 16 Q Okay. You anticipated it. But it's your  
 17 testimony that no officer or employee of HCMFA did  
 18 anything independently to make sure that it was  
 19 accurate; that they completely and 100 percent  
 20 just deferred and relied on somebody else under a  
 21 contract?  
 22 A Frank Waterhouse was the treasurer. You  
 23 said any – any officer. He was – in his role,  
 24 he provided this information. And I don't know  
 25 his extent of how he looked into it, but if you

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1 Dustin Norris  
 2 your answer that was responsive to my  
 3 question.  
 4 BY MR. MORRIS:  
 5 Q As HCMFA's 30(b)(6) witness today, have  
 6 you done anything to determine whether or not the  
 7 \$12.286 million number includes the principal  
 8 amount of the notes?  
 9 A Looking at it, we can't tell. Because it  
 10 doesn't line up exactly with those notes. There  
 11 were other notes that had been recorded in the  
 12 books for several years before. And if you add  
 13 those two together, it doesn't add up. So it's  
 14 not clear.  
 15 Q Did you read the testimony of Mr. Klos and  
 16 Ms. Hendrix? I think you said you did; right?  
 17 A I did.  
 18 Q Did you read the portion of their  
 19 testimony where they said that this number  
 20 includes the notes as well as certain other  
 21 amounts that were due and owing to certain  
 22 Highland affiliates?  
 23 A I did – I didn't read every single line,  
 24 and there were, between the two of them – I don't  
 25 know – 600 pages. So if it's in there and you

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1 Dustin Norris  
 2 look at the email chain, it didn't look too  
 3 extensive. And if you even look at this, he's  
 4 saying that the earliest the note between HCMLP  
 5 and HCMFA can come due is May 21st. He himself  
 6 seems to be confused here, because as we found out  
 7 through discovery and in the testimony of what has  
 8 come out, there was an agreement – that was a  
 9 separate agreement. That wasn't related to the  
 10 notes at issue in this case.  
 11 And so I don't know the extent that  
 12 was gone into this, but it – it – there's  
 13 confusion even in the response.  
 14 MR. MORRIS: Okay. I move to  
 15 strike.  
 16 BY MR. MORRIS:  
 17 Q Again, I was just asking about the  
 18 identity of anybody who was charged with the  
 19 responsibility of making sure that this was true  
 20 and accurate.  
 21 Is there any officer or employee of  
 22 HCMFA who was charged with the responsibility of  
 23 making sure this response was true and accurate?  
 24 A Yeah. It was sent to – the request went  
 25 to Frank Waterhouse because he and his team would

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1 Dustin Norris  
 2 have this information. That's -- that's where we  
 3 would get this information.  
 4 Q Okay. Thank you.  
 5 MR. RUKAVINA: Hey, John, let me  
 6 just interject for a little. Let's go off  
 7 the record for just a minute.  
 8 (Discussion off the record.)  
 9 BY MR. MORRIS:  
 10 Q Do you know, as HCMFA's 30(b)(6)  
 11 representative, whether the \$12.286 million  
 12 includes the \$7.5 million -- withdrawn.  
 13 Do you know if the 12. -- withdrawn.  
 14 As HCMFA's 30(b)(6) witness, do you  
 15 know whether the \$12.286 million referenced in  
 16 Response Number 2 includes the \$7.4 million in  
 17 principal amount on the notes?  
 18 A I don't.  
 19 Q Okay. Did you do anything to try to  
 20 answer that question before appearing for today's  
 21 deposition?  
 22 A Yeah. We discussed this with counsel. We  
 23 don't have underlying backup. We couldn't talk to  
 24 Frank Waterhouse on this in preparation, but the  
 25 numbers just don't match up to principal amounts

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1 Dustin Norris  
 2 from him, and he emailed that. So I would refer  
 3 you to his testimony.  
 4 Q Well, as the 30(b)(6) witness, you were  
 5 asked to be prepared about communications to the  
 6 retail board; correct?  
 7 A Yes.  
 8 Q Okay. Did you do anything to try to  
 9 figure out what that sentence meant -- that  
 10 sentence meant, other than reading Frank  
 11 Waterhouse's deposition transcript?  
 12 A Knowing that it came from Frank, and Frank  
 13 elaborated, I didn't do any additional research.  
 14 Q Did you ask Mr. Dondero if he was aware  
 15 that that statement was included in the report to  
 16 the retail board?  
 17 A I did not.  
 18 Q Do you know why this statement was  
 19 included in the report to the retail board?  
 20 A I could speculate, but I don't know  
 21 specifically.  
 22 Q Do you know if Mr. Dondero authorized the  
 23 advisers to inform the retail board, in October  
 24 of 2020, that the advisers had the full faith and  
 25 support of Mr. Dondero?

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1 Dustin Norris  
 2 and what is owing. We don't have information on  
 3 the other notes. So discussed it with counsel,  
 4 but I -- we don't have any backup to support or --  
 5 Q Did you make -- did you make any attempt  
 6 to speak with Ms. Thedford?  
 7 A No, I didn't. And she wouldn't have that  
 8 information. She's an attorney and was involved  
 9 in the legal field, and she's no longer employed  
 10 there or at Skyview.  
 11 MR. MORRIS: I move to strike.  
 12 BY MR. MORRIS:  
 13 Q Okay. And so you don't know what the  
 14 component parts of this \$12.286 million number  
 15 are; correct?  
 16 A I don't.  
 17 Q Okay. Do you see the last sentence of  
 18 this response that says, quote: "The adviser  
 19 notes that both entities have the full faith and  
 20 support of Jim Dondero," close quote?  
 21 A I do.  
 22 Q Do you know what that means?  
 23 A Other than what Frank Waterhouse  
 24 testified -- and I, again, refer you to his  
 25 deposition -- that -- I believe that wording came

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1 Dustin Norris  
 2 A I'm not aware, and if you look at Frank's  
 3 testimony, I believe he testified that he -- he  
 4 didn't have that authority either, but I'm not  
 5 sure. I would refer you to his -- I don't have  
 6 any other knowledge.  
 7 Q Okay. So it's HCMFA's position that the  
 8 statement in the last sentence of Response  
 9 Number 2 was unauthorized. Do I have that  
 10 correctly?  
 11 A I don't know that we're taking that  
 12 position either way. It wasn't something  
 13 that -- that we're -- was even part of the -- our  
 14 arguments.  
 15 Q I'm not asking if it's part of your  
 16 arguments. I'm just asking you, as a factual  
 17 matter, does HCMFA contend that that sentence was  
 18 included without authorization?  
 19 A I don't have the knowledge of that.  
 20 That's -- I'm not going to contend that.  
 21 Q Okay.  
 22 A It may have been. I don't know.  
 23 Q Okay. So this letter was sent over a year  
 24 ago. Do I have that right?  
 25 A What's the date on it?

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1 Dustin Norris  
 2 MR. MORRIS: If we can go back to  
 3 the top.  
 4 THE WITNESS: Yup.  
 5 BY MR. MORRIS:  
 6 Q Okay. Has – have the advisers ever told  
 7 the retail board that the response to Question  
 8 Number 2 was inaccurate in any way?  
 9 A Specifically saying, "Hey, let me tell you  
 10 this memo, Question 2, let me go back, it was  
 11 inaccurate," no, that was never a specific  
 12 disclosure of the retail board.  
 13 However, the retail board is aware of  
 14 all of the facts and circumstances surrounding the  
 15 notes, and so they're aware of our position.  
 16 They're aware of – they've been demanded.  
 17 There's been a lawsuit involved on both notes.  
 18 And – and – but, no, this specific  
 19 Number 2 is incorrect, no. But they're aware of  
 20 our position and what we found out since then.  
 21 Q Okay. Earlier in 2020, before this memo  
 22 was sent to the retail board, HCMFA had provided  
 23 to the retail board its financial statements for  
 24 the period ending June 30, 2020; correct?  
 25 A I believe that's typical in our August

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1 Dustin Norris  
 2 Q And who is that?  
 3 A She is independent counsel for the retail  
 4 board, the independent directors.  
 5 Q And did she provide to the people on this  
 6 email string certain questions that the retail  
 7 board had in connection with its annual 15(c)  
 8 review?  
 9 A Yes. These were follow-up requests. So  
 10 they have a memo that she provides early on with  
 11 an extensive list of questions, and these were the  
 12 follow-up questions from the board.  
 13 Q Okay. And so it was sent to you,  
 14 actually; correct?  
 15 A To me and Lauren.  
 16 MR. MORRIS: Can we scroll up a  
 17 little bit, please? Keep going.  
 18 BY MR. MORRIS:  
 19 Q And then Lauren forwards it to certain  
 20 people, including you; correct?  
 21 A She forwards it to Thomas and copies me.  
 22 Q Uh-huh. And – and she includes the  
 23 questions that are being asked by the retail  
 24 board; correct?  
 25 A I don't know if – I don't know if that's

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1 Dustin Norris  
 2 meeting as part of the 15(c) process, but – I  
 3 don't know if you have that in hand, but I believe  
 4 that was supplied. I'm not certain. Sometimes it  
 5 was 12/31 balance sheets, sometimes it was a  
 6 June 30th balance sheet.  
 7 Q Okay. Can we – are you aware – have you  
 8 seen an email exchange that preceded the – the  
 9 finalization of this memo to the retail board?  
 10 A I believe it was part of your exhibits.  
 11 Q All right.  
 12 MR. MORRIS: So let's put that up  
 13 on the screen, Exhibit 36.  
 14 (Exhibit 36 tendered.)  
 15 BY MR. MORRIS:  
 16 Q So is this the document that you've seen  
 17 before?  
 18 A Yes.  
 19 Q Okay.  
 20 MR. MORRIS: And can we start at  
 21 the bottom of the document?  
 22 BY MR. MORRIS:  
 23 Q Okay. And do you know who Stacy from  
 24 Blank Rome is?  
 25 A I do.

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1 Dustin Norris  
 2 all of them. I don't know if you have the memo.  
 3 If you represent that is all the questions,  
 4 then –  
 5 Q Yeah.  
 6 A – then I'll take that representation,  
 7 but –  
 8 Q And – and Question Number 2 is the same  
 9 Question Number 2 that we just looked at in the  
 10 report that was given to the retail board;  
 11 correct?  
 12 A I don't know if it's exact, but – I don't  
 13 know if you want to pull that up.  
 14 Q Don't you have a copy of it with you right  
 15 there?  
 16 A I don't know if I have a copy of that.  
 17 Oh, I have the exhibits. What exhibit was that?  
 18 I have it in PDF.  
 19 Q Yeah, that's – that was 59.  
 20 A I'm scrolling. There are 650 pages here.  
 21 Sorry. Which exhibit again?  
 22 Q You know, let's just move on.  
 23 Is it fair to say that Ms. Thedford  
 24 forwarded to Mr. Surgent, you, and others,  
 25 questions that had been presented by Stacy, the

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1 Dustin Norris  
 2 retail board's outside counsel?  
 3 A Just one correction there. She forwarded  
 4 it to Mr. Surgent and copied me.  
 5 Q Fair enough.  
 6 A I'm not on the "To" line. That would  
 7 be --  
 8 MR. MORRIS: Let's scroll down,  
 9 please. Let's scroll.  
 10 BY MR. MORRIS:  
 11 Q And then -- and then she forwards it  
 12 further to Mr. Waterhouse, Mr. Klos, and  
 13 Ms. Hendrix.  
 14 Do you see that?  
 15 A I do.  
 16 Q And you're still copied on it; correct?  
 17 A I am.  
 18 Q And do you see that she's asking Frank,  
 19 Mr. Klos, and Kristin to respond to Question  
 20 Number 2 that concerns material outstanding  
 21 amounts currently payable or due in the future to  
 22 Highland or its affiliates by either of the  
 23 advisers?  
 24 A Yes, it -- HCMLP will take that as a typo.  
 25 But yes. And that would be standard. Lauren

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1 Dustin Norris  
 2 was simply whether or not, you know, you would  
 3 acknowledge that you were copied on this email.  
 4 A Yup, that's my email.  
 5 Q Okay. And let's see what the next  
 6 response is.  
 7 And do you see Mr. Waterhouse  
 8 responds -- can you read Mr. Waterhouse's  
 9 response?  
 10 A I can. He said: "It's on the balance  
 11 sheet that was provided the board as part of the  
 12 15(c) materials."  
 13 Q Okay. So everybody to whom Mr. Waterhouse  
 14 has sent -- withdrawn.  
 15 So you don't dispute, as HCMFA's  
 16 30(b)(6) witness, that Mr. Waterhouse informed all  
 17 of the recipients of his email on Tuesday,  
 18 October 6th, 2020, at 6:05 p.m. that the answer to  
 19 the retail board's Question Number 2 could be  
 20 found in HCMFA's balance sheet; correct?  
 21 A Correct.  
 22 Q Okay. Let's go --  
 23 A Actually, can you go back down to the  
 24 answer -- the exact question?  
 25 Q Of course.

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1 Dustin Norris  
 2 would go to them as the source for that  
 3 information.  
 4 Q Okay.  
 5 MR. MORRIS: And let's scroll up  
 6 and see the response.  
 7 BY MR. MORRIS:  
 8 Q And do you see Mr. Waterhouse responded  
 9 with one word: "Yes"?  
 10 A Yes, I see that.  
 11 Q And then Ms. Thedford asked if  
 12 Mr. Waterhouse could provide the amounts.  
 13 Do you see that?  
 14 A I do.  
 15 Q And you're still copied on this email  
 16 chain; correct?  
 17 A I am.  
 18 Q So --  
 19 A Which, again, is not unusual to copy me on  
 20 some things I wish they wouldn't. But I was  
 21 copied on board items fairly regularly.  
 22 MR. MORRIS: Okay. I move to  
 23 strike.  
 24 BY MR. MORRIS:  
 25 Q I appreciate your wishes, but the question

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1 Dustin Norris  
 2 Okay.  
 3 A "Are there material outstanding amounts  
 4 currently payable or due to the future by HCMLP to  
 5 HCMFA" -- yeah -- "or any other affiliate?"  
 6 Okay.  
 7 Q Having read that, does that change your  
 8 answer at all?  
 9 A And so -- go back to your original  
 10 question on whether his --  
 11 Q Right. So Mr. --  
 12 MR. MORRIS: Can we scroll back up  
 13 to Mr. Waterhouse's response?  
 14 BY MR. MORRIS:  
 15 Q Thank you for your patience, Mr. Norris.  
 16 A Uh-huh.  
 17 Q You'll see that Mr. Waterhouse responds at  
 18 6:05 p.m. on October 6th, and my question is a  
 19 simple one: Does HCMFA dispute that in  
 20 Mr. Waterhouse's email that he is telling the  
 21 recipients that the answer to the retail board's  
 22 Question Number 2 can be found in HCMFA's balance  
 23 sheet?  
 24 A I would say the answer -- his -- his  
 25 response is the answer to the retail board is not

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1 Dustin Norris  
 2 completely accurate, because there was – there's  
 3 not enough there to be responsive. I think what  
 4 he's saying here is to Lauren, "Hey, it's on the  
 5 balance sheet. Can you look at it and figure it  
 6 out?"  
 7 And I – I think they go back and  
 8 forth, "Well, can you give us more information?"  
 9 And so it's – this is not responsive to the  
 10 question and isn't what was provided to the board,  
 11 but that's –  
 12 Q Well, let – let's see what Ms. Thedford  
 13 does. Ms. Thedford's the lawyer, right?  
 14 A She is.  
 15 Q Yeah. But she's also the secretary of  
 16 HCMFA; correct?  
 17 A At this time, I believe so, yes.  
 18 Q And you wouldn't dispute that she is  
 19 taking the lead on formulating the advisers'  
 20 response to the retail board; correct?  
 21 A I would not dispute that.  
 22 Q Okay. And do you see that she reports to  
 23 you and everybody else in her email that she has  
 24 taken information from the 6/30 financials?  
 25 A Yes, I see the below from the 6/30

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1 Dustin Norris  
 2 looking at a draft answer here. I don't have the  
 3 final answer. But it looks as work product that  
 4 she's pulling numbers from the unaudited balance  
 5 sheet and plugging them in here.  
 6 Q Okay. And we can look at the final if you  
 7 want, but that \$12,286,000 number that was due to  
 8 HCMLP as of June 30th 2020, that's the exact  
 9 figure that was given to the retail board in the  
 10 final report; correct?  
 11 A "Final report," meaning the final memo –  
 12 final memos?  
 13 Q Yes.  
 14 A Yes. Yes, I believe so.  
 15 Q Okay.  
 16 MR. MORRIS: Can you scroll back up  
 17 to the last email?  
 18 BY MR. MORRIS:  
 19 Q So this is Mr. Waterhouse's response to  
 20 Ms. Thedford. And, again, Mr. Waterhouse is  
 21 Highland's CFO and the advisers' treasurer;  
 22 correct?  
 23 A Correct.  
 24 Q And at this time, Ms. Thedford is an  
 25 attorney at Highland, but she also serves as the

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1 Dustin Norris  
 2 financials. And, again, to correct to me, I'm  
 3 CC'd. It's a nuance, but she's representing to  
 4 Frank and Dave and Kristin with a CC to me.  
 5 Q Okay. Does HCMFA acknowledge that the  
 6 information contained in the October 23rd, 2020,  
 7 report to the retail board with respect to  
 8 Question Number 2 was derived from HCMFA's  
 9 June 30th, 2020, financials?  
 10 A Sorry. One more time?  
 11 Q Will you agree, as HCMFA's 30(b)(6)  
 12 witness, that the information provided to the  
 13 retail board in October 2020 in response to  
 14 Question Number 2 was taken directly from HCMFA's  
 15 financial statements for the period ending  
 16 June 30th, 2020?  
 17 A Yeah. The unaudited financials, yes.  
 18 Q Okay. And so – so as HCMFA's 30(b)(6)  
 19 witness, you will agree that the \$12,286,000  
 20 figure that was included in the former response to  
 21 the retail board was obtained from HCMFA's  
 22 unaudited financial statements for the period  
 23 ending June 30th, 2020; correct?  
 24 A It appears that way.  
 25 And I – I think – and, again, we're

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1 Dustin Norris  
 2 secretary for the advisers; correct?  
 3 A That's correct.  
 4 Q And you are the executive vice president  
 5 for the advisers; correct?  
 6 A As of this date, yes.  
 7 Q And you had no position with Highland;  
 8 correct?  
 9 A At this time?  
 10 Q Correct.  
 11 A No position with Highland, no.  
 12 Q Okay. How about Mr. Post? Had he  
 13 transitioned from Highland to the advisers as of  
 14 October 6th?  
 15 A I don't believe so.  
 16 Q Okay. It happened in October, though;  
 17 right?  
 18 A I – I don't know.  
 19 Q Okay.  
 20 A Late October/November. It was late in the  
 21 year.  
 22 Q Okay. And do you know if anybody ever  
 23 told Mr. Waterhouse in October 2020 that there was  
 24 any aspect of his email that was incorrect?  
 25 A Not at that time, no, that I'm – not that



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1 Dustin Norris  
 2 I'm aware of.  
 3 Q Okay.  
 4 A And – and would we have reason to doubt  
 5 him? This – he was the source of the  
 6 information.  
 7 Q Okay. And do you see that the last  
 8 sentence of his email actually refers to the last  
 9 sentence of Response Number 2 that was given to  
 10 the retail board later in October 2020?  
 11 A I do.  
 12 Q Did you ever ask Mr. Waterhouse anything  
 13 about that last sentence?  
 14 A I don't believe so.  
 15 Q Do you see that he says, quote: "The  
 16 response should include, as I covered in the board  
 17 meeting, that both entities have the full faith  
 18 and backing from Jim Dondero, and to my knowledge  
 19 that hasn't changed?"  
 20 Do you see that?  
 21 A I do.  
 22 Q Do you know what board meeting he's  
 23 referring to?  
 24 A "The response should include, as I covered  
 25 in the board meeting, that both entities have a

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1 Dustin Norris  
 2 sending of the final memo on October 23rd?  
 3 A Not that I'm aware of.  
 4 Q You didn't; isn't that right?  
 5 A I don't know that I read it, but I didn't  
 6 question it. If I – I either didn't read it or I  
 7 didn't question it.  
 8 Q Okay. So you have no recollection of ever  
 9 asking Mr. Waterhouse what he meant by the last  
 10 sentence of this email; correct?  
 11 A No, I have no recollection.  
 12 Q And you have no recollection of any  
 13 recipient of this email asking Mr. Waterhouse what  
 14 he meant by that last sentence; correct?  
 15 A I don't remember.  
 16 Q And you never told Mr. Waterhouse that you  
 17 had no knowledge of him having covered this issue  
 18 before the board?  
 19 A You're wondering if I ever told him I had  
 20 no knowledge?  
 21 Q Yeah.  
 22 A No, I never talked to him about that.  
 23 Q And to the best of your knowledge, no  
 24 recipient of this email ever challenged  
 25 Mr. Waterhouse's statement in this last sentence;

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1 Dustin Norris  
 2 full faith and backing."  
 3 So I don't know the exact board  
 4 meeting. However, we do have an August board  
 5 meeting related to 15(c). There's typically an  
 6 in-person or telephonic meeting in August, and  
 7 then there's a September board meeting that is  
 8 devoted almost exclusively to the 15(c) process.  
 9 And after that, there is follow-up  
 10 meetings – multiple sometimes, particularly in  
 11 2020 during the bankruptcy proceedings that –  
 12 where the board was getting comfortable. So it  
 13 would have been one of those meetings, but I don't  
 14 know which one.  
 15 Q And – and did you personally participate  
 16 in a board meeting where Mr. Waterhouse covered  
 17 the topic of the advisers having the full faith  
 18 and backing from Mr. Dondero?  
 19 A I – I probably would have been in most or  
 20 all of those board meetings, but I don't remember  
 21 that specifically.  
 22 Q Okay. Do you know – do you know whether  
 23 anybody who's copied on this email ever questioned  
 24 any aspect of the last sentence of  
 25 Mr. Waterhouse's email at any time prior to the

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1 Dustin Norris  
 2 correct?  
 3 A I don't know what the conversations were  
 4 had between the others, but I have no knowledge of  
 5 that.  
 6 Q Okay.  
 7 A And – and you've got – sorry. Go ahead.  
 8 Q This email string is – is an email string  
 9 devoted for the sole purpose of addressing  
 10 questions posed by the retail board in connection  
 11 with the 15(c) review; correct?  
 12 A I believe so.  
 13 Q Okay. Have you ever seen HCMFA's  
 14 unaudited financial statements for June 30th,  
 15 2020?  
 16 A Yes.  
 17 Q And do you know if those audited –  
 18 unaudited financial statements included the  
 19 amounts due and payable under the notes?  
 20 A I – I think that – I – I don't  
 21 remember, but I think our position is it's  
 22 unclear, because the amounts don't agree to  
 23 the – again, we have prior notes, we have these  
 24 notes. The amounts don't line up.  
 25 So it's – it's – the underlying

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1 Dustin Norris  
 2 backing is not provided. There's no footnotes.  
 3 It's just a number that says due to HCMLP.  
 4 Q Do you know – do you know – do you have  
 5 any recollection as to the totality of HCMFA's  
 6 liabilities as of June 30th, 2020?  
 7 A Including this note? Or just this note?  
 8 Q All – all liabilities. What's the bottom  
 9 of the balance sheet?  
 10 A I don't know. Do you have it? Do you  
 11 want to pull it up?  
 12 Q I don't.  
 13 A Yeah, I don't remember.  
 14 MR. RUKAVINA: Hey, John, it's  
 15 approaching 12:15. Just whenever, you  
 16 know –  
 17 MR. MORRIS: Yeah. You know what?  
 18 I was just about to change topics, so this  
 19 is a good time.  
 20 MR. RUKAVINA: Okay.  
 21 MR. MORRIS: Why don't we stop  
 22 here, and we'll come back at the top of  
 23 the hour.  
 24 MR. RUKAVINA: Excellent. Thank  
 25 you.

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1 Dustin Norris  
 2 Q Let's start generally.  
 3 A Yeah. So a "consent fee" is a fee paid to  
 4 a – paid to someone who's agreeing to amend terms  
 5 or change the structure of the – of a document or  
 6 a loan. In – in bank loan world, or loan world,  
 7 if you are going to amend or extend or change the  
 8 terms, typically there was a consent fee paid to  
 9 those willing to consent.  
 10 Those that have voted or consented  
 11 receive a fee.  
 12 Q Okay. And did HCMFA pay any consent fees  
 13 in or around April or May 2019?  
 14 A It began to pay consent fees in May  
 15 of 2019, I believe.  
 16 Q Okay. Are you looking at something as you  
 17 prepare your answer?  
 18 A Yeah. I'm looking at Topic Number 9 that  
 19 says consent fee in April or May 2019.  
 20 Q Okay. Thank you so much.  
 21 And – and I think you testified that  
 22 they began paying consent fees at around that  
 23 time?  
 24 A That's right.  
 25 Q What do you mean by that?

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1 Dustin Norris  
 2 (Recess from 12:11 p.m. to 1:06 p.m. CST)  
 3 BY MR. MORRIS:  
 4 Q Mr. Norris, Topic Number 9 relates to  
 5 consent fees.  
 6 Do you understand that?  
 7 A I do.  
 8 Q Do you have an understanding of what a  
 9 "consent fee" is?  
 10 A I do.  
 11 Q Did you do anything to prepare for this  
 12 particular topic?  
 13 A I did.  
 14 Q What did you do to prepare for this topic?  
 15 A I discussed the consent fee with  
 16 Mr. Dondero, with Mr. Rukavina, and with  
 17 Mr. Sauter.  
 18 Q Okay. Mr. Sauter has no personal  
 19 knowledge of any consent fee that was paid in the  
 20 spring of 2019; correct?  
 21 A No.  
 22 Q Okay. What's your understanding of what a  
 23 "consent fee" is?  
 24 A Generally or the specific consent fee  
 25 in – that –

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1 Dustin Norris  
 2 A Yeah. So the consent fee was related to  
 3 the global allocation fund that converted from an  
 4 open-end fund to a closed-end fund, and there was  
 5 a 3 percent fee that would be paid to investors  
 6 that, one, consented to the conversion from an  
 7 open-end fund to a closed-end fund, but also held  
 8 their investment through the conversion.  
 9 The conversion was finalized in  
 10 February of 2019, and the consent fee was an  
 11 operational challenge because you had to determine  
 12 who the investors were that voted yes and that  
 13 held on to the conversion.  
 14 So with that, the – the amounts that  
 15 were paid, there was an operational challenge to  
 16 determine who – who needed to be paid, and so  
 17 they were deposited and then paid out over a  
 18 couple-month period.  
 19 Q And who made the decision to pay the  
 20 consent fee?  
 21 A So the consent fee was a collaborative  
 22 decision of senior management. Jim Dondero and  
 23 myself were involved in the decision, the  
 24 discussion to – and it was a novel idea in terms  
 25 of converting from an open-end fund to a

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1 Dustin Norris  
 2 closed-end fund, and it was submitted to  
 3 investors. It went through SEC review as a proxy  
 4 statement, and it went out to shareholders who  
 5 needed to vote for the proposal.  
 6 Q And who paid the consent fee? HCMFA?  
 7 A My understanding is HCMFA as the adviser  
 8 of the global allocation fund paid the consent fee  
 9 to investors.  
 10 Q And whose idea was it to seek consent to  
 11 change from an open fund to a closed-end fund?  
 12 A I – I would say it was collaborative of  
 13 senior management. Jim Dondero, myself, legal  
 14 compliance was involved. It was, you know, Mark  
 15 Okada, who was a partner at the time. There was a  
 16 lot of discussion involved.  
 17 Q And when the decision was made to seek  
 18 consent to change from an open-end fund to a  
 19 closed-end fund, did HCMFA understand that there  
 20 would be costs, fees, and expenses associated with  
 21 that decision?  
 22 A Being cost fees as in the consent fee?  
 23 Q Correct.  
 24 A Yes.  
 25 Q And did it undertake any analysis to

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1 Dustin Norris  
 2 Q Okay. And the decision to seek and obtain  
 3 consent, was that a voluntary decision by HCMFA?  
 4 A To seek consent to move to a closed-end  
 5 fund?  
 6 Q Yes. That's not something that any  
 7 regulator required, was it?  
 8 A No.  
 9 Q It's not something that any rule or  
 10 anybody mandated; correct?  
 11 A Not that I believe.  
 12 Q Okay. How did HCMFA fund the payment of  
 13 the total consent fee of over \$5 million?  
 14 A Yeah, from cash that it had on the balance  
 15 sheet.  
 16 Q And where did it get the cash that was on  
 17 the balance sheet?  
 18 A The cash came from the transaction that we  
 19 discussed earlier – and you showed the capital  
 20 coming in from Highland – which was compensation  
 21 for the NAV error.  
 22 Q So it used the money that it received in  
 23 the transfers that we talked about to pay the  
 24 consent fee. Do I have that right? Or at least  
 25 some of it?

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1 Dustin Norris  
 2 determine what the likely total fee would be?  
 3 A Yeah. I'm sure they did.  
 4 Q Do you know what the total fee  
 5 paid – what the total consent fee paid was?  
 6 A I don't have the exact amount, but it was  
 7 over \$5 million.  
 8 Q Okay. And over what period of time were  
 9 the consent fees paid?  
 10 A I know they were paid in May and June, and  
 11 there may be a portion that were paid thereafter,  
 12 but at least May and June of 2019. There were  
 13 certain broker-dealers that reported later, and  
 14 when those were reported and verified, they were  
 15 paid out. I don't remember the final date of the  
 16 last distribution.  
 17 Q Okay. And forgive me. It's not my  
 18 business. But were the consent fees paid to the  
 19 fund's shareholders?  
 20 A They were paid to the shareholders.  
 21 That's correct.  
 22 Q Okay.  
 23 A That's consented. The shareholders had to  
 24 vote, and they had to be a shareholder on  
 25 conversion date.

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1 Dustin Norris  
 2 A Yes.  
 3 Q And, in fact, it used approximately  
 4 \$5 million of the moneys paid in May 2019 to pay  
 5 the consent fee of approximately \$5 million; is  
 6 that fair?  
 7 A At least \$5 million.  
 8 Q Okay. Do you know the exact number?  
 9 A Of the consent fee?  
 10 Q Withdrawn.  
 11 Do you have a better or more precise  
 12 estimate of the total consent fee other than  
 13 \$5 million?  
 14 A It was over \$5 million. I don't remember  
 15 the exact amount, whether it was 5.6 or 5.2 –  
 16 Q All right.  
 17 A – because it was paid over time.  
 18 Q Let's talk about the TerreStar valuation  
 19 issue for a few minutes, if we can.  
 20 A Okay.  
 21 Q Just generally, in 2018/2019, HCMFA spent  
 22 a fair amount of time addressing the consequences  
 23 of a valuation error concerning TerreStar. Do I  
 24 have that right?  
 25 A There was a lot in there, but there was,

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1 Dustin Norris  
 2 during that time, a lot of discussions with  
 3 TerreStar over the concerns of a valuation error  
 4 in 2018 and '19.  
 5 Q And did it ultimately turn out that there  
 6 was a valuation error involving TerreStar?  
 7 A There was.  
 8 Q Okay. And had HCMFA retained Houlihan  
 9 Lokey in connection with doing the TerreStar  
 10 valuation?  
 11 A Houlihan Lokey was involved in the  
 12 valuation, yes.  
 13 Q And who retained Houlihan Lokey?  
 14 A I don't know.  
 15 Q As you sit here right now, you can't tell  
 16 me who retained Houlihan Lokey?  
 17 A I don't know if it was HCMLP or HCMFA  
 18 or – I don't know.  
 19 Q Okay. Are you familiar with the firm  
 20 Houlihan Lokey?  
 21 A I am.  
 22 Q And do you know what services they  
 23 provided in connection with the TerreStar  
 24 valuation?  
 25 A I do.

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1 Dustin Norris  
 2 that retained Houlihan Lokey?  
 3 A I don't know.  
 4 Q Would you agree that Houlihan Lokey is  
 5 fairly described as an independent third-party  
 6 valuation consultant?  
 7 A Yes, generally.  
 8 Q Okay. And do you know when Houlihan Lokey  
 9 was retained?  
 10 A I don't.  
 11 Q Houlihan Lokey's retention was approved by  
 12 the retail board, wasn't it?  
 13 A I'm not sure.  
 14 Q Have you ever seen any of the work product  
 15 of Houlihan Lokey in connection with the TerreStar  
 16 valuation?  
 17 A Yeah. I remember seeing the valuation  
 18 model.  
 19 Q So Houlihan Lokey did prepare the  
 20 valuation model that is the subject of the  
 21 TerreStar valuation issue; is that fair?  
 22 A Working very closely with the HCMLP  
 23 employees with the inputs, yes.  
 24 Q Did HCMFA rely on the Houlihan Lokey  
 25 valuation model?

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1 Dustin Norris  
 2 Q Can you describe for me the services that  
 3 were provided by Houlihan Lokey in connection with  
 4 the TerreStar –  
 5 A And I would say I do generally. I was not  
 6 involved in the individual details. That was all  
 7 the HCMLP employees.  
 8 So all of the Highland employees that  
 9 were involved in the shared services agreement,  
 10 the valuation committee, valuation services were  
 11 the responsibility of HCMLP. Key inputs were  
 12 provided by HCMLP. Key estimates and  
 13 interpretations to Houlihan, and they used their  
 14 models to calculate a valuation that was then  
 15 approved by the valuation committee at HCMLP.  
 16 And so that's my general understanding  
 17 of the valuation process.  
 18 Q Do you know how much Houlihan Lokey was  
 19 paid for its work?  
 20 A I don't.  
 21 Q Do you know if there's an engagement  
 22 letter pursuant to which Houlihan Lokey provided  
 23 these services?  
 24 A I'm not aware.  
 25 Q Would you dispute that HCMFA is the entity

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1 Dustin Norris  
 2 A I'm not sure.  
 3 Q Does HCMFA contend that Houlihan Lokey  
 4 made any mistakes in connection with its valuation  
 5 services?  
 6 A I'm not sure.  
 7 Q Does HCMFA have a position as to whether  
 8 or not Houlihan Lokey made any mistakes in any of  
 9 the services that it performed in connection with  
 10 the TerreStar valuation?  
 11 A I think they don't have details and would  
 12 retain their rights to understand what their role  
 13 and – sorry. What was the original question?  
 14 Q Just whether HCMFA has a position as to  
 15 whether or not Houlihan Lokey made any mistakes in  
 16 the work that it did in connection with the  
 17 TerreStar valuation?  
 18 A Yeah. I think they're retaining their  
 19 rights to understand that better.  
 20 Q Is there any agreement with Houlihan Lokey  
 21 that would give HCMFA the time to do that? Is  
 22 there a tolling agreement or anything like that?  
 23 A Not that I'm aware of.  
 24 Q Is HCMFA undertaking any analysis to  
 25 determine whether or not Houlihan Lokey made any

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1 Dustin Norris  
 2 mistakes in connection with the work that it did  
 3 on the TerreStar valuation?  
 4 A Sorry. One more time.  
 5 Q Is HCMFA undertaking any analysis or  
 6 investigation to try to determine whether Houlihan  
 7 Lokey made any mistakes?  
 8 A There are – I don't know. I don't know.  
 9 Q You have no knowledge, as you sit here  
 10 today, as to whether HCMFA is undertaking any  
 11 analysis or investigation to try to determine  
 12 whether Houlihan Lokey did anything wrong in  
 13 connection with its valuation services; correct?  
 14 A And I wasn't prepared – I don't think  
 15 this is one of the topics – you know, Houlihan  
 16 Lokey's, you know, involvement, and so I wasn't  
 17 prepared to answer that one.  
 18 Q Okay. Well, the defense – HCMFA's  
 19 defense is that Highland is responsible for the  
 20 TerreStar valuation issue; correct?  
 21 A Yes.  
 22 Q And there's no question that Houlihan  
 23 Lokey provided services in connection with that  
 24 valuation; correct?  
 25 A Correct.

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1 Dustin Norris  
 2 you asking about.  
 3 MR. MORRIS: I think it's – I  
 4 think I have the answer that I need and  
 5 that the executive vice president and  
 6 30(b)(6) witness has no knowledge of any  
 7 investigation or analysis that has been  
 8 undertaken by HCMFA to try to even  
 9 determine whether Houlihan Lokey is at  
 10 fault.  
 11 BY MR. MORRIS:  
 12 Q Do I have that right, Mr. Norris?  
 13 MR. RUKAVINA: Well, I will just  
 14 object that that was not your prior  
 15 question.  
 16 MR. MORRIS: All right. Well,  
 17 that's my question now.  
 18 BY MR. MORRIS:  
 19 Q Is that correct, Mr. Norris?  
 20 A I know there's been discussion with  
 21 counsel.  
 22 MR. RUKAVINA: Well, I will  
 23 represent to you that we have looked for a  
 24 Houlihan Lokey contract and have not been  
 25 able to find one. Otherwise, we would

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1 Dustin Norris  
 2 Q But HCMFA has not undertaken any analysis  
 3 or investigation, to the best of your knowledge,  
 4 to try to determine if Houlihan Lokey was the  
 5 responsible party; fair?  
 6 A We don't know if there is a contract or  
 7 not. At this point, we're talking about the  
 8 defense of Highland's responsibility. There's no  
 9 question they were responsible for the valuations.  
 10 They were outsource provider of the valuation  
 11 committee. Every individual working and  
 12 coordinating with Houlihan Lokey was an HCMFA  
 13 employee. All the data and information that was  
 14 provided to them came from HCMLP. There's no  
 15 question that Highland was responsible for the NAV  
 16 error. No one ever questioned that. That was  
 17 always known. It was all the employees that were  
 18 involved.  
 19 MR. RUKAVINA: John, I'll just  
 20 reiterate that we did not understand your  
 21 topics to include Houlihan Lokey. If you  
 22 need more information about that or if we  
 23 need to have a supplemental deposition,  
 24 that's fine. But this is just not  
 25 something that we reasonably anticipated

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1 Dustin Norris  
 2 have produced it to you. So if you have  
 3 anything like that, we'd love to see it.  
 4 We do not even know whether we had a  
 5 contract with Houlihan Lokey or not. So  
 6 we'll try to find you information, John.  
 7 We just – we just don't have it.  
 8 MR. MORRIS: We'll get to that in a  
 9 moment.  
 10 BY MR. MORRIS:  
 11 Q Has HCMFA – withdrawn.  
 12 Has HCMFA ever told Houlihan Lokey  
 13 that it believed it made any mistake or error of  
 14 any kind in connection with its work on the  
 15 TerreStar valuation?  
 16 A Again, I – this is not a topic that we  
 17 reviewed, so I don't know.  
 18 Q Okay. You're not aware of anything today,  
 19 correct?  
 20 A Again, the employees working with Houlihan  
 21 Lokey were the HCMLP employees. So I don't know  
 22 if the debtor employees have that conversation,  
 23 but –  
 24 MR. MORRIS: Yeah, I'm going to  
 25 move to strike.

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1 Dustin Norris  
 2 BY MR. MORRIS:  
 3 Q And I'm asking about HCMFA.  
 4 Did – has HCMFA ever informed  
 5 Houlihan Lokey that HCMFA believes that Houlihan  
 6 Lokey made a mistake or error in the work that it  
 7 did?  
 8 A There were ongoing discussions extensively  
 9 throughout this with Houlihan Lokey and the debtor  
 10 employees regarding the error and what the causes  
 11 were. It was extensive discussions.  
 12 MR. MORRIS: Okay. Move to strike.  
 13 BY MR. MORRIS:  
 14 Q Has HCMFA ever told Houlihan Lokey that  
 15 HCMFA believes that Houlihan Lokey made a mistake  
 16 or an error in connection with its valuation  
 17 services?  
 18 A It may have, but I'm not aware.  
 19 Q Thank you.  
 20 Are you familiar with the report that  
 21 HCMFA prepared and sent to the Global Allocation  
 22 Fund concerning the TerreStar valuation issues?  
 23 A They sent to the fund?  
 24 Q Uh-huh.  
 25 A What do you mean "they sent to the fund"?

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1 Dustin Norris  
 2 involved was an HCMLP employee.  
 3 MR. MORRIS: I move to strike.  
 4 BY MR. MORRIS:  
 5 Q And I'm going to ask you, sir, to listen  
 6 carefully to my question.  
 7 Have you ever seen a document that  
 8 HCMFA sent to Highland in which HCMFA accused  
 9 Highland of being the cause of the NAV error?  
 10 A I have not.  
 11 Q Thank you.  
 12 Do you see the document that's on the  
 13 screen?  
 14 A I do.  
 15 Q Before I get to that, so the NAV error  
 16 occurred sometime prior to May 2019; correct?  
 17 A Beginning – I don't know the specific  
 18 dates. I believe it began in May of 2019 –  
 19 sorry. May 2019 –  
 20 Q That's when it ended; right?  
 21 A What's that?  
 22 Q That's when it ended; right? That's –  
 23 A Yeah, it was before May 2019.  
 24 Q Okay. So during the entire time that the  
 25 TerreStar NAV error was being discussed and

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1 Dustin Norris  
 2 Q They sent to the board of the fund?  
 3 A Oh, the board of the fund.  
 4 There were a number of memos and  
 5 presentations. If you have one you want to pull  
 6 up, you can – we can refer to it.  
 7 Q Sure.  
 8 MR. MORRIS: Let's put up what  
 9 we've marked as Exhibit 182.  
 10 (Exhibit 182 tendered.)  
 11 BY MR. MORRIS:  
 12 Q And while we're doing that, have you ever  
 13 seen a single document anywhere at any time in  
 14 which any representative of HCMFA took Highland to  
 15 task for the work that it did in connection with  
 16 the TerreStar valuation?  
 17 A "Took them to task"? Define "take them to  
 18 task."  
 19 Q Told them that they were the source and  
 20 cause of the NAV error.  
 21 A The irony of all of the reporting to the  
 22 board, all of the valuation knowledge was from  
 23 HCMLP's employees. We – we outsourced that to  
 24 them. There was – there was no question that  
 25 they were at fault, and that's – every employee

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1 Dustin Norris  
 2 analyzed and debated and communications with the  
 3 SEC, during that entire period, Jim Dondero was in  
 4 control of both HCMFA and Highland; correct?  
 5 A Yes, I believe so.  
 6 Q Okay. Can you identify any employee of  
 7 Highland who was fired as a result of any of the  
 8 mistakes that were made in connection with the  
 9 TerreStar valuation?  
 10 A No.  
 11 Q Can you identify –  
 12 A Not that I can remember.  
 13 Q Can you identify any steps that  
 14 Mr. Dondero took against any employee who was  
 15 allegedly involved in the NAV error?  
 16 A That would have been an HCMLP matter. I  
 17 don't have any knowledge of HCMLP's hiring or  
 18 firing practices.  
 19 Q Okay. So at no time did anybody ever tell  
 20 you that any disciplinary measures were imposed  
 21 upon any Highland employee as a result of the NAV  
 22 error that Highland allegedly caused; correct?  
 23 A Any firing practice? Is that what you  
 24 said?  
 25 Q Disciplinary. Firing. Anything.

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1 Dustin Norris  
 2 A There was a remediation process that had  
 3 to go into effect, which was improvement of  
 4 controls, and they maybe even hired additional  
 5 people. But it was – and I don't – I'm not  
 6 aware of any disciplinary, but there could have  
 7 been.  
 8 Q Okay. But that would just be speculation  
 9 on your part; correct?  
 10 A Yeah.  
 11 Q So have you seen the document that's up on  
 12 the screen?  
 13 A I have.  
 14 Q Did you read it before it was sent?  
 15 A I don't think so.  
 16 Q Did anybody – did any officer or employee  
 17 take responsibility for making sure that –  
 18 withdrawn.  
 19 What is this document?  
 20 A It is titled "Resolution of the Funds Net  
 21 Asset Value Error."  
 22 Q And was – is it your understanding that  
 23 the purpose of this document was to enable HCMFA  
 24 to explain to the Global Allocation Fund how the  
 25 resolution of the NAV error was being conducted?

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1 Dustin Norris  
 2 A I know they had counsel they referred to  
 3 for SEC matters, and I don't know if they utilized  
 4 them here or not. They were all Highland  
 5 employees that worked on this. So I'm sure you  
 6 probably have that in your records.  
 7 Q Sir, can you identify any outside counsel  
 8 that was retained by Highland to advise it in  
 9 connection with the TerreStar valuation issues  
 10 that were the subject of an SEC investigation?  
 11 A I have – I have no knowledge of that.  
 12 Q Okay. Did you see this memo that's up on  
 13 the screen that's been marked as Exhibit 182 prior  
 14 to the time that it was sent?  
 15 A I don't recall.  
 16 Q The NAV error was the subject of an SEC  
 17 investigation; correct?  
 18 A Correct.  
 19 Q Do you know if HCMFA ever told the SEC  
 20 orally, in writing, or otherwise that Highland  
 21 Capital Management, LP, was the cause of the NAV  
 22 error?  
 23 A Not that I'm aware of, but they were  
 24 concerned about the ultimate correction of the NAV  
 25 error. I don't think they were concerned about

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1 Dustin Norris  
 2 A Not to the Global Allocation Fund. This  
 3 is a memo to the board.  
 4 Q Thank you for the clarification.  
 5 Subject to that clarification, is my  
 6 description otherwise correct?  
 7 A I believe so. There had been a number of  
 8 communications with the board, and this is the  
 9 resolution of the whole process, or most of the  
 10 process.  
 11 Q This was a pretty big issue for HCMFA,  
 12 wasn't it?  
 13 A There was a lot of people involved. It  
 14 was – there was a lot of involvement from –  
 15 mostly Highland Capital Management, LP, employees,  
 16 but it was – there was a lot involved.  
 17 Q And who – what outside counsel was  
 18 retained?  
 19 A Adviser counsel is counsel – is – I  
 20 believe it was K&L Gates for HCMFA.  
 21 Q And who was Highland's counsel?  
 22 A I don't know.  
 23 Q Do you know if Highland had counsel?  
 24 A I don't know.  
 25 Q Do you –

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1 Dustin Norris  
 2 the responsible party.  
 3 But I would say every single person  
 4 that interacted with the SEC, I believe, were  
 5 HCMLP employees. We can see that on the other  
 6 memo that they have to the SEC following up on a  
 7 call; all HCMLP employees. So whether they told  
 8 them or not, they were all HCMLP employees.  
 9 MR. MORRIS: Okay. Move to strike  
 10 after the very first portion of the answer  
 11 that was responsive.  
 12 BY MR. MORRIS:  
 13 Q Did anybody – did any officer or employee  
 14 of HCMFA ever inform the SEC that Highland Capital  
 15 Management, LP, was the responsible party for the  
 16 NAV error?  
 17 A Specifically, not that I'm aware of.  
 18 Q Okay. Was any HCMFA officer or employee  
 19 responsible for making sure that the memorandum up  
 20 on the screen that's been marked as 182 was true  
 21 and accurate before it was sent to the board of  
 22 the Highland Global Allocation Fund?  
 23 A I don't know that there is a – there's a  
 24 specific requirement of an officer to verify the  
 25 accuracy.

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1 Dustin Norris  
 2 Q Okay. But my question was a little bit  
 3 broader, and that was whether there was any  
 4 officer or employee who was given the  
 5 responsibility of making sure this document was  
 6 true and accurate before it was sent to the board  
 7 of the GAF.  
 8 A I don't even know who drafted this. It  
 9 would have come from Highland's compliance legal  
 10 and accounting team with all the expertise around  
 11 the NAV error and all of those that were involved.  
 12 Q So did you see this document at or around  
 13 the time it was sent to the GAF board?  
 14 A I probably did.  
 15 Q Do you recall telling anybody at that time  
 16 that you believed there were any errors in the  
 17 document?  
 18 A I think, as I testified before, I  
 19 don't – I don't remember reading it. But I  
 20 didn't – I didn't say there were errors in the  
 21 document, no.  
 22 Q Prior to the answer date of March 1st,  
 23 2021, did anybody acting on behalf of HCMFA ever  
 24 tell anybody in the world at any time that there  
 25 was any error in this memorandum?

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1 Dustin Norris  
 2 sentence of the second paragraph?  
 3 Q Yeah. First of all, do you see that the  
 4 second paragraph refers to the adviser and  
 5 Houlihan Lokey?  
 6 A It does.  
 7 Q And do you see that the reference to  
 8 Houlihan Lokey includes a reference to Houlihan  
 9 Lokey having been approved by the board?  
 10 A Yes.  
 11 Q And do you understand that that means the  
 12 board of GAF?  
 13 A Yes.  
 14 Q Does that refresh your recollection that  
 15 the GAF board approved of the retention of  
 16 Houlihan Lokey as an independent third-party  
 17 expert valuation consultant?  
 18 A It doesn't refresh my recollection, but it  
 19 says it there. I don't know that I have a  
 20 document saying they – I haven't seen the  
 21 approval, the agreement.  
 22 Q But you don't dispute that this memo was  
 23 sent to the GAF board on or about May 28th, 2019;  
 24 correct?  
 25 A Correct.

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1 Dustin Norris  
 2 A Not that I'm aware of.  
 3 Q Did HCMFA send this memorandum –  
 4 withdrawn.  
 5 Did HCMFA intend this – withdrawn.  
 6 Did HCMFA expect the GAF board to rely  
 7 on this memorandum?  
 8 A I don't know what the intention was.  
 9 Q You don't know what HCMFA's intention was  
 10 in sending this memorandum?  
 11 A If it's addressed to the board, it could  
 12 be to educate. But I'm sure that the board  
 13 would – would rely on or expect that that memo  
 14 would be accurate.  
 15 Q Okay. And this is dated after all of the  
 16 payments have been made that we've been talking  
 17 about, the May 2nd and the May 3rd payments;  
 18 correct?  
 19 A Correct.  
 20 Q Take a look at the second paragraph.  
 21 A Yup.  
 22 Q Do you see the first sentence refers to  
 23 two initial determinations that were made by the  
 24 adviser and Houlihan Lokey?  
 25 A Sorry. Which part? Just the first

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1 Dustin Norris  
 2 Q Okay. And HCMFA told the GAF board at  
 3 that time that HCMFA and Houlihan Lokey, quote,  
 4 "initially determined that the March transactions  
 5 were non-orderly and should be given zero  
 6 weighting for purposes of fair value."  
 7 Is that correct?  
 8 A The HCMLP, as part of the valuation – or  
 9 as the outsource valuation provider, were the  
 10 employees that made that determination. The  
 11 adviser ultimately has the responsibility, but it  
 12 was outsourced. And those were HCMLP employees,  
 13 along with Houlihan Lokey, that determined the  
 14 March transactions were non-orderly.  
 15 MR. MORRIS: I'm going to move to  
 16 strike.  
 17 BY MR. MORRIS:  
 18 Q And I'm going to ask you to listen  
 19 carefully to my question.  
 20 I'm asking you what HCMFA told the GAF  
 21 board. Did HCMFA tell the GAF board on May 28th,  
 22 2019, that HCMFA and Houlihan Lokey, quote,  
 23 "initially determined that the March transactions  
 24 were non-orderly and should be given zero  
 25 weighting for purposes of determining fair value."



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1 Dustin Norris  
 2 Is that correct?  
 3 A The – in the memo, it says that on this  
 4 date, there were many other conversations probably  
 5 around this date and on this date discussing the  
 6 determinations and non-orderly and that it was the  
 7 HCMLP employees, and the board knew that. They  
 8 were very aware that it was the – the valuation  
 9 control environment of HCMLP that determined these  
 10 were non-orderly transactions.  
 11 Q So this – so this report is inaccurate,  
 12 according to you?  
 13 A No. There's – there's just – your  
 14 question was did they tell the board. There is a  
 15 lot that we told the board outside of this memo.  
 16 This memo does say advised from Houlihan Lokey.  
 17 The adviser is ultimately responsible. But there  
 18 was a lot of communication with the board –  
 19 Q Okay.  
 20 A – around this, that they knew exactly who  
 21 was responsible for valuation as the board  
 22 determining that these were market transactions  
 23 and orderly or non-orderly.  
 24 Q Okay. I want to focus on this memo,  
 25 because this is the one that I have. And you'll

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1 Dustin Norris  
 2 Have I read that correctly?  
 3 A You did.  
 4 Q And so would you agree with me, as HCMFA's  
 5 30(b)(6) witness, that on May 28th, 2019, HCMFA  
 6 told the GAF board that the two causes of the NAV  
 7 error were the orderly determination and the  
 8 adoption of the weighted fair value methodology –  
 9 fair value – fair valuation methodology?  
 10 A Those were – it doesn't say those are  
 11 exclusively the only factors, but those are  
 12 mentioned here.  
 13 Q It says those two factors resulted in the  
 14 NAV error; correct?  
 15 A Those – no, it didn't say "the NAV  
 16 error." It said "in NAV errors."  
 17 Q Which it's defining as the NAV error;  
 18 correct?  
 19 A Defines as "the NAV error."  
 20 Q Okay. Does HCMFA contend that there's  
 21 anything in this paragraph that is inaccurate?  
 22 A Again, I – I don't know that Houlihan  
 23 Lokey was approved by the board, but I don't know  
 24 of any other contention.  
 25 Q Okay. And you don't – and HCMFA doesn't

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1 Dustin Norris  
 2 agree with me that there's no reference to  
 3 Highland Capital Management, LP, anywhere in this  
 4 report; correct?  
 5 A No, there's not, but the board knew that  
 6 HCMLP was preparing the valuations.  
 7 MR. MORRIS: All right. I move to  
 8 strike after the word "no."  
 9 BY MR. MORRIS:  
 10 Q And it was the determination concerning  
 11 whether or not it was orderly or non-orderly, and  
 12 whether or not to use zero weighting that were the  
 13 two causes of the NAV error; correct?  
 14 A Those were key portions.  
 15 Q In the last sentence, in fact, that's the  
 16 only portions; isn't that fair?  
 17 A "Initially determined" – well, it doesn't  
 18 say that there's not other factors. They're the  
 19 only ones mentioned.  
 20 Q Let me – let me – let me read the last  
 21 sentence.  
 22 Quote: "The orderly determination and  
 23 adoption of the weighted fair value methodology  
 24 resulted in NAV errors in the fund," and that's  
 25 what it's defining as the NAV error.

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1 Dustin Norris  
 2 dispute that Houlihan Lokey was approved by the  
 3 board. You're just telling me that, as you sit  
 4 here today, that's the one fact that you've not  
 5 been able to confirm; is that fair?  
 6 A As far as I know, yeah.  
 7 Q Okay. Let's go on to the next paragraph.  
 8 MR. MORRIS: If we could just  
 9 scroll up a little bit.  
 10 BY MR. MORRIS:  
 11 Q I'm going to try and summarize here, but  
 12 if you don't think it's a fair summary, of course  
 13 I would encourage you to let me know.  
 14 Is it fair to say that, as a general  
 15 matter, the next paragraph describes a total loss  
 16 from the NAV error as being approximately  
 17 \$7.5 million?  
 18 A Yeah, including processing costs and  
 19 rebates and offsets, yes.  
 20 Q Right. That's what the parenthetical  
 21 says, a total loss –  
 22 A Yup.  
 23 Q – of approximately \$7.5 million?  
 24 A Correct.  
 25 Q And the next paragraph states that that

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1 Dustin Norris  
 2 loss was funded with two payments. Do I have that  
 3 correct in the first sentence?  
 4 A Correct.  
 5 Q Okay. Did HCMFA pay approximately  
 6 \$5.186 million on or around February 15, 2019, in  
 7 connection with the NAV error?  
 8 A I believe so.  
 9 And if we go to the next page, it has  
 10 dates and payments. I think it's represented  
 11 there.  
 12 Q Okay. Where did HCMFA get the money to  
 13 make that payment?  
 14 A A combination of insurance proceeds and  
 15 cash that it had. And, again, that's detailed, I  
 16 believe, on the next page.  
 17 Q HCMFA contends that the \$7.4 million  
 18 transferred by Highland to HCMFA was mistakenly  
 19 recorded as a loan; correct?  
 20 A There's – there's two different amounts  
 21 that we contend were recorded as a note, a  
 22 combined 7.4 million, yes.  
 23 Q Okay. And HCMFA contends that the  
 24 \$7.4 million in payments was not to be a loan, but  
 25 was supposed to be compensation for Highland's

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1 Dustin Norris  
 2 BY MR. MORRIS:  
 3 Q The only thing I'm asking you for is a  
 4 date. And if you don't know, the answer is "I  
 5 don't know." So let me try one more time.  
 6 Do you know when HCMFA first  
 7 determined that Highland was negligent?  
 8 A I don't know the first date.  
 9 Q Do you know if it was in 2018 or 2019?  
 10 A I don't know.  
 11 Q Do you know when the NAV error first –  
 12 was first identified?  
 13 A I believe the NAV error was determined in  
 14 early 2019.  
 15 Q Was it before or after – I mean, the –  
 16 the NAV error must have been identified before  
 17 February 15, 2019; correct?  
 18 A Correct.  
 19 Q Okay.  
 20 A Well, I should say whether there – I  
 21 don't know. I don't remember – we'll have to  
 22 look through the documents – what the actual –  
 23 oh, you're saying before February 15th. Yes,  
 24 that's when the paid insurance proceeds came in.  
 25 So yes.

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1 Dustin Norris  
 2 negligent valuation services in connection with  
 3 the NAV error; correct?  
 4 A Sorry. One more time.  
 5 Q HCMFA contends that the \$7.4 million in  
 6 payments was supposed to be compensation resulting  
 7 from Highland's negligent valuation services;  
 8 correct?  
 9 A Yes, subject to all of our defenses that  
 10 we've laid out in our pleadings.  
 11 Q Okay. When did HCMFA reach the conclusion  
 12 that Highland was the cause of the NAV error?  
 13 A The – there was never – I don't think  
 14 there was ever a question. It was always known  
 15 that HCMLP employees were the ones creating the  
 16 valuation, overseeing the valuation, working with  
 17 the value – you know, everything that was done  
 18 was outsourced to HCMLP.  
 19 And so it was discussed with the  
 20 board. It was discussed in-depth internally. The  
 21 employees were all HCMLP employees. So I can't  
 22 pinpoint a date, but there – it was a known  
 23 factor that HCMLP was responsible.  
 24 MR. MORRIS: Okay. I move to  
 25 strike.

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1 Dustin Norris  
 2 Q No question – no question that HCMFA knew  
 3 before February 15, 2019, that there was a NAV  
 4 error; correct?  
 5 A Correct.  
 6 Q No question that HCMFA knew before  
 7 February 15, 2019, that the NAV error was caused  
 8 by Highland; correct?  
 9 A Yeah. Like I said, it was always known  
 10 that these were Highland employees that were  
 11 outsourced through the valuation, and they were  
 12 the ones at fault.  
 13 Q Okay. Do you know if – if HCMFA ever  
 14 demanded compensation from Highland for any errors  
 15 or mistakes it may have made in connection with  
 16 the TerreStar valuation?  
 17 A Yeah. Mr. Dondero told Frank to make the  
 18 payments to compensate for the NAV error.  
 19 Q And did he do that in his capacity as the  
 20 person in control of HCMFA, or did he do that in  
 21 his capacity as the person in control of Highland?  
 22 A I would imagine it would have been both.  
 23 Further supported, he transferred money – of his  
 24 own money to HCMLP to then pay HCMFA. And so  
 25 he – yes, he was on both sides of it, but he had

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1 Dustin Norris  
 2 the authority on both sides to make that decision.  
 3 Q Okay. And so Mr. Dondero reached an  
 4 agreement with himself pursuant to which HCMFA  
 5 demanded and Highland agreed to pay the  
 6 \$7.4 million as a consequence of Highland's  
 7 negligent conduct in the performance of its  
 8 valuation services. Do I have that right?  
 9 A Sounds like there's a legal determination  
 10 there that needs to be made. I --  
 11 Q It's a factual one, I promise.  
 12 A Entering -- whether entering into an  
 13 agreement or not, I -- that seems like a legal  
 14 determination. But maybe ask the question again.  
 15 Q Did somebody on behalf of Highland agree  
 16 to pay HCMFA \$7.4 million in order to compensate  
 17 HCMFA for Highland's negligent services in  
 18 connection with the TerreStar valuation?  
 19 A Yes. Mr. Dondero.  
 20 Q Thank you.  
 21 Is there any document anywhere that  
 22 you have ever seen that reflects Highland's  
 23 agreement to pay \$7.4 million as compensation to  
 24 HCMFA?  
 25 A I haven't seen a settlement agreement or

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1 Dustin Norris  
 2 position -- it is not -- it is our  
 3 position that there is no settlement  
 4 agreement.  
 5 MR. MORRIS: Thank you very much.  
 6 BY MR. MORRIS:  
 7 Q Is it your position that there is any  
 8 document of any kind that reflects Highland's  
 9 agreement to pay \$7.4 million as compensation?  
 10 A No. Subject to our defenses, but there's  
 11 none.  
 12 Q Did Mr. Dondero tell Mr. Waterhouse that  
 13 the money that he was asking to be transferred  
 14 from Highland to HCMFA be transferred as  
 15 compensation for the NAV error?  
 16 A Our position is that this was compensation  
 17 for the NAV error, and that was discussed.  
 18 Mr. Dondero told Frank. And I believe Frank even  
 19 testified to that, and Mr. Dondero testified to  
 20 that in their depositions.  
 21 Q Okay. Now, you said that the February  
 22 payment of over \$5 million was funded through  
 23 insurance proceeds and cash.  
 24 Do I have that right?  
 25 A Yes.

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1 Dustin Norris  
 2 an agreement to that effect, no.  
 3 Q You haven't seen anything; correct?  
 4 A No.  
 5 Q Have you looked?  
 6 A We have. I actually wouldn't be  
 7 surprised -- I would be surprised to see one. And  
 8 it's -- my understanding is -- and the company's  
 9 position is that there doesn't need to be an  
 10 agreement. Right? We --  
 11 Q I'm not asking -- I'm going to interrupt  
 12 you again. I'm not asking you --  
 13 MR. RUKAVINA: Well, John --  
 14 MR. MORRIS: -- anything like that.  
 15 I need him to answer my questions or we're  
 16 going to be here all night.  
 17 MR. RUKAVINA: John, hold on.  
 18 BY MR. MORRIS:  
 19 Q Have you ever -- have you ever seen  
 20 anything --  
 21 MR. RUKAVINA: John, hold on. Hold  
 22 on.  
 23 MR. MORRIS: No, no. Davor,  
 24 please -- please --  
 25 MR. RUKAVINA: John, it is not our

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1 Dustin Norris  
 2 Q And the cash portion was really just the  
 3 deductible?  
 4 A If you want to go to Page 2, we can look  
 5 at the details.  
 6 Q Sure. Sure.  
 7 A I don't have it all by memory.  
 8 Q That's fair.  
 9 MR. MORRIS: Let's go to the next  
 10 page.  
 11 BY MR. MORRIS:  
 12 Q Looking at this, do the third and fourth  
 13 lines refresh your recollection --  
 14 A Yes.  
 15 Q -- that the February payment was funded  
 16 through insurance proceeds and an insurance  
 17 deductible paid by the adviser?  
 18 A Yes, I believe that's correct.  
 19 Q Okay. And Topic Number 8 on the 30(b)(6)  
 20 notice relates to the insurance claim; right?  
 21 A Uh-huh.  
 22 Q Okay. Did you do anything to familiarize  
 23 yourself with the insurance claim?  
 24 A I did.  
 25 Q And what did you do to familiarize

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1 Dustin Norris  
 2 yourself with the insurance claim?  
 3 A I discussed with DC and Davor the  
 4 company's position on the insurance claim.  
 5 Q Okay. I don't want to know what the  
 6 company's position is. I want to know what the  
 7 facts are.  
 8 Did you learn any facts in connection  
 9 with your diligence and your preparation to answer  
 10 topic – questions on Topic Number 8?  
 11 A Yeah. The HCMFA policy was – was – the  
 12 HCMFA – HCMFA had an insurance policy with ICI  
 13 Mutual; and based on the NAV error, the policy  
 14 was – I don't know what the word is – was used  
 15 to seek reimbursement for the NAV error.  
 16 Q Okay. So –  
 17 (Reporter discussion off the record.)  
 18 BY MR. MORRIS:  
 19 Q So did HCMFA file a claim for insurance  
 20 coverage with ICI Mutual in connection with the  
 21 NAV error?  
 22 A The HCMLP employees, I believe, through  
 23 Frank Waterhouse and his team, did that. They –  
 24 they managed the insurance as part of the shared  
 25 services agreement, and they filed with the

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1 Dustin Norris  
 2 writing?  
 3 A I believe so.  
 4 Q Have you seen the claim?  
 5 A I don't – I don't recall seeing the  
 6 claim.  
 7 Q In connection with the defense of this  
 8 lawsuit and the preparation, have you made any  
 9 efforts to identify the actual claim that was  
 10 filed on behalf of HCMFA?  
 11 MR. RUKAVINA: Let me interject –  
 12 let – let me interject. And we can talk  
 13 about this offline. We searched for that  
 14 and could not find it. We suspect it  
 15 might be in HCMLP's legal documents that  
 16 we don't have access to, but we have and  
 17 we continue to actively search for the  
 18 claim itself. We have not been able to  
 19 find it.  
 20 BY MR. MORRIS:  
 21 Q Does HCMFA use an insurance broker?  
 22 A I don't believe so for this. I think it's  
 23 directly with ICI Mutual. And it – we – there's  
 24 no broker, but it goes through HCMLP's employees.  
 25 Frank Waterhouse would have been the one probably

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1 Dustin Norris  
 2 insurance company –  
 3 Q And – and the filing –  
 4 A – on behalf of HCMFA.  
 5 Q And the filing that was made, was that a  
 6 claim that was made on behalf of HCMFA?  
 7 A I believe so, yes.  
 8 Q And did HCMFA authorize the filing of that  
 9 claim?  
 10 A Our position is that that – that is a  
 11 valid claim from HCMFA.  
 12 Q All right. Did HCMFA authorize the filing  
 13 of the insurance claim?  
 14 A I – I don't know.  
 15 Q Did – has HCMFA ever told anybody at any  
 16 time that the insurance claim was not authorized  
 17 by HCMFA?  
 18 A No.  
 19 Q And HCMFA received almost \$5 million on  
 20 account of the claim; right?  
 21 A Correct.  
 22 Q And HCMFA wanted to recover on its  
 23 insurance claim; correct?  
 24 A Yes.  
 25 Q Did the claim – was the claim made in

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1 Dustin Norris  
 2 interacting with ICI Mutual.  
 3 Q HCMFA and HCMLP broke up at the end of  
 4 February; is that fair?  
 5 A That's correct.  
 6 Q At any time since the end of February, has  
 7 HCMFA made any effort to obtain any information  
 8 concerning this insurance claim from ICI Mutual?  
 9 A I don't know where we got the source of –  
 10 of the documents, but there – there was – they  
 11 were searching for the ICI documents. I don't  
 12 know if it came from ICI or another source.  
 13 Q Anybody –  
 14 A I don't –  
 15 Q Anybody from HCMFA reach out to ICI Mutual  
 16 for information relating to this insurance claim  
 17 at any time?  
 18 A I don't – not that I'm aware of.  
 19 Q Okay.  
 20 A They may have, but I don't know.  
 21 Q Do you know when the claim was filed?  
 22 A I don't. I – I don't. I – I think it  
 23 may have been late 2018, but I'm not sure.  
 24 Q And at the time HCMFA filed the claim for  
 25 insurance, it had already formed the opinion that

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1 Dustin Norris  
 2 Highland Capital Management, LP, was the  
 3 responsible party; correct?  
 4 A I believe so, yes.  
 5 Q Did HCMFA tell the insurance company that  
 6 Highland Capital Management was the responsible  
 7 party?  
 8 A I'm not sure. Again, this was Highland  
 9 employees that filled out the materials and was  
 10 working with ICI. So I don't know if your  
 11 employees notified them.  
 12 Q So the total estimated loss was  
 13 approximately \$7.5 million; right? That's the top  
 14 number on the right?  
 15 A Yes.  
 16 Q Okay. And roughly two-thirds of that was  
 17 financed through insurance proceeds that were  
 18 received in February of 2019; correct?  
 19 A Correct.  
 20 Q And thereafter, it's HCMFA's contention  
 21 that Highland paid it another \$7.4 million for  
 22 purposes of providing compensation in connection  
 23 with its negligent work on the -- on the TerreStar  
 24 valuation error; correct?  
 25 A Yes, that's correct. And that lines up,

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1 Dustin Norris  
 2 A I -- I don't know that -- how the theory  
 3 relates to profits, but we've -- we've paid -- and  
 4 say, "What's the logic for this?" We paid in  
 5 insurance premiums for years, significant  
 6 insurance premiums. And so there's been a loss  
 7 for years and years for the insurance, and then  
 8 we're now hitting that insurance to say there's a  
 9 gain of \$5 million, whatever number you threw out.  
 10 I would disagree with that.  
 11 But, yes, there was proceeds of  
 12 12-and-a-half million, but we've been paying in  
 13 insurance proceeds or premiums for a long time.  
 14 We're going to continue, and likely, I would  
 15 imagine, those premiums will go up because of the  
 16 claim.  
 17 So I -- I'm, again, not a lawyer. I  
 18 don't understand all the reasons why it's  
 19 permitted. But our position is that the  
 20 collateral source rule under Texas law permits you  
 21 to receive from the insurance -- your insurance  
 22 provider and from the party that did you harm.  
 23 And as you said, here we believe it's negligence.  
 24 It may be breach of contract, but we believe it's  
 25 negligence.

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1 Dustin Norris  
 2 7.4 million, with the net -- net loss that's shown  
 3 there, estimated loss.  
 4 Q Right. So it's fair to say, then, from --  
 5 that it's HCMFA's position that it received  
 6 \$7.4 million from Highland as compensation, and  
 7 approximately \$5 million from the insurance  
 8 carrier as compensation for total receipts of  
 9 \$12.4 million in connection with the NAV star --  
 10 with the TerreStar valuation error?  
 11 A Correct.  
 12 Q Okay. Why would H- -- why does HCMFA  
 13 contend that its entitled to \$12.4 million from  
 14 Highland and the insurance company when the total  
 15 loss was only \$7.4 million?  
 16 A Yeah, it's -- it's our position that the  
 17 collateral -- and I'm not an attorney. But  
 18 understanding our position here, that under Texas  
 19 law, the collateral source rule would permit you  
 20 to recover value from the insurance company and to  
 21 the individual or the -- the company that created  
 22 the -- or caused you harm.  
 23 Q So you're -- would you agree that HCMFA  
 24 has profited by about \$5 million as a result of  
 25 the NAV error under that theory?

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1 Dustin Norris  
 2 Q Okay. I just want to make this really  
 3 clean.  
 4 The estimated net loss from the NAV  
 5 error is \$7.442 million; correct?  
 6 A The estimated loss from the NAV error,  
 7 yes.  
 8 Q Okay. And notwithstanding that HCMFA  
 9 believed that Highland was the responsible party,  
 10 HCMFA, nevertheless, filed a claim for insurance  
 11 coverage with ICI Mutual; correct?  
 12 A That's correct.  
 13 Q And ICI Mutual paid almost \$5 million in  
 14 connection with that claim; correct?  
 15 A Correct.  
 16 Q And in addition to that almost \$5 million,  
 17 it's HCMFA's position that it received and was  
 18 entitled to receive an additional \$7.4 million  
 19 from Highland as compensation for its error;  
 20 correct?  
 21 A Correct.  
 22 Q So that notwithstanding the fact that the  
 23 estimated net loss was \$7.44 million, HCMFA  
 24 received and contends that it's entitled to keep  
 25 \$12.4 million; correct?

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1 Dustin Norris  
 2 A That's correct, subject to our defenses.  
 3 Q Okay. Did – has – has HCMFA ever  
 4 informed ICI Mutual that it received \$7.4 million  
 5 from Highland on account of the NAV error?  
 6 A Not that I'm aware of.  
 7 Q Has HCMFA ever told ICI Mutual that  
 8 Highland was at fault?  
 9 A Again, I think I already answered that. I  
 10 don't know. Communication with ICI was done by  
 11 the HCMLP employees as part of the shared services  
 12 agreement, and I'm not sure if they communicated  
 13 that.  
 14 MR. MORRIS: Okay. I move to  
 15 strike.  
 16 BY MR. MORRIS:  
 17 Q I just – I'm just asking for your  
 18 knowledge, not speculation.  
 19 Do you have any knowledge that anyone  
 20 on behalf of HCMFA ever informed ICI Mutual that  
 21 Highland was the cause of the NAV error?  
 22 A I have no knowledge.  
 23 MR. MORRIS: Let's take a short  
 24 break. The time now is 3:06 – or 2:06.  
 25 Let's just come back at 3:20.

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1 Dustin Norris  
 2 carrier would have processed a claim of that  
 3 magnitude in six weeks?  
 4 A I know they expedited it and they  
 5 specialize in – sorry. I'll step back.  
 6 I have no knowledge of how quick  
 7 carriers make these claims –  
 8 Q All right. Do you know –  
 9 A Other than hail on my house – hail damage  
 10 on my roof, I don't have personal knowledge of  
 11 insurance claims.  
 12 MR. MORRIS: You know, I apologize,  
 13 but can I ask Ms. Canty to put back up on  
 14 the screen that last exhibit that we had?  
 15 I don't have the exhibit number.  
 16 All right. And go to the prior  
 17 page. And go to the bottom of that page.  
 18 BY MR. MORRIS:  
 19 Q So we've put back up on the screen, I  
 20 think –  
 21 MS. CANTY: 182.  
 22 MR. MORRIS: 182.  
 23 BY MR. MORRIS:  
 24 Q All right. And do you see in the next to  
 25 the last paragraph, Mr. Norris, there's a

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1 Dustin Norris  
 2 (Recess from 2:07 p.m. to 2:21 p.m. CST)  
 3 BY MR. MORRIS:  
 4 Q So we were talking a bit about the  
 5 insurance payment that was received in February  
 6 of 2019. Do you remember that?  
 7 A Yes.  
 8 Q And there was a claim that was filed on  
 9 behalf of HCMFA that resulted in that insurance  
 10 proceed payment; correct?  
 11 A Correct.  
 12 Q And do you recall if that insurance claim  
 13 was filed in 2018 or 2019?  
 14 A I don't recall, but I believe it was late  
 15 2018. But I don't know.  
 16 Q Yeah.  
 17 A And as we testified, we don't have that  
 18 claim. We've searched for it. It's probably on  
 19 your server, as I – Frank Waterhouse and his team  
 20 would have submitted that.  
 21 Q Yeah. But you haven't made any effort to  
 22 get it from the carrier; right?  
 23 A No, not that I know of.  
 24 Q Okay. And would you agree with me that  
 25 it's probably extremely unlikely that an insurance

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1 Dustin Norris  
 2 reference to a period from March 18, 2018, to  
 3 January 19, 2019?  
 4 A Yes.  
 5 Q That's what they've defined as the NAV  
 6 restatement period. Do you see that?  
 7 A Yes, I do.  
 8 Q Okay. Looking at that period, does that  
 9 refresh your recollection at all as to when in  
 10 2018 HCMFA first learned about the NAV error?  
 11 A No, because that was – that was the  
 12 period of time when the market – the off-market  
 13 or on-market transactions happened, March 18th.  
 14 Q Okay.  
 15 A It was sometime in between that they found  
 16 out that there was an error.  
 17 Q Okay. And do you know if it was the first  
 18 half of 2018 or the second half?  
 19 A The midyear audits of some of our funds, I  
 20 believe, is when it first came up.  
 21 Q And –  
 22 A So 6/30 audits that were due 60 days  
 23 later. So second half – I believe second half of  
 24 2018.  
 25 Q So is it fair to say sometime in August or

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1 Dustin Norris  
 2 September is when HCMFA first learned about it?  
 3 A About – define "it." Is that the NAV  
 4 error.  
 5 Q I apologize. Let me ask the question  
 6 again.  
 7 Is it fair to say, based on the timing  
 8 of the audit, 60 days after June 30th would take  
 9 us to approximately August 31st; right?  
 10 A It does.  
 11 Q And so is it fair to say, then, that HCMFA  
 12 first learned about the NAV error sometime in  
 13 August of 2018 while it was preparing the  
 14 financials for the period ending June 30th?  
 15 A No. I don't think there was a  
 16 determination of whether there was a NAV error or  
 17 not at that point. I think the reason they have  
 18 going all the way to January 19 – 2019 is it  
 19 wasn't determined – finalized if there is an  
 20 error or not.  
 21 There was a lot of discussion with the  
 22 SEC and auditors over whether there was or wasn't  
 23 an error, what the amount was, what the proper  
 24 valuation should be. There was consultation with  
 25 the SEC, and that process lasted, I believe,

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1 Dustin Norris  
 2 that it learned of the valuation issues, or was  
 3 there a period during which it knew about the  
 4 valuation issues, but not – had not yet formed  
 5 the conclusion that Highland was the responsible  
 6 party?  
 7 A From the beginning, everybody knew who the  
 8 responsible party was for the valuation. Those  
 9 reporting the issues, those responding to  
 10 auditors, those responding to SEC and the board  
 11 were all HCMLP employees from the beginning. But  
 12 I don't have a specific date.  
 13 Again, as you look here, it doesn't  
 14 say when the NAV error was determined, but from  
 15 the beginning, it was the knowledge that HCMLP was  
 16 responsible for the valuations.  
 17 Q Okay. Do you know when HCMFA first  
 18 determined that the estimated loss was  
 19 approximately \$7.4 million?  
 20 A I don't, no. I don't have specifics, but  
 21 it was after there was a determination there was  
 22 actually a NAV error. And it may be in some of  
 23 the documents that you have. I believe it may be  
 24 in, you know, a memo to the board or the SEC, but  
 25 I don't know offhand.

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1 Dustin Norris  
 2 several weeks, if not months.  
 3 So that is not when they found out  
 4 about a NAV error, but the questions over  
 5 valuation, yes.  
 6 Q Okay. So then let me state the question  
 7 differently then.  
 8 Is it fair to say that HCMFA first  
 9 learned in or about August 2018 of the valuation  
 10 issues?  
 11 A The "about" is key here. I don't know the  
 12 specific date, but around that time or earlier –  
 13 Q Okay.  
 14 A – or later. On or around that time.  
 15 Q And did HCMFA conclude, at the same time  
 16 it learned of the valuation issues, that HCMFA was  
 17 the responsible party? Or was there a gap between  
 18 learning about the valuation issues and making the  
 19 determination that Highland was the responsible  
 20 party?  
 21 A Yeah, first you said HCMFA was the  
 22 responsible party, and then you said Highland.  
 23 Q I apologize. Let me try and restate that.  
 24 Did HCMFA conclude that Highland was  
 25 the responsible party at or around the same time

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1 Dustin Norris  
 2 Q Do you know when there was a determination  
 3 that there was a NAV error?  
 4 A I don't know the specific time, no.  
 5 Q Do you know if it was in 2019 or 2018?  
 6 A I don't remember.  
 7 Q Is it fair to say that it was before  
 8 May of 2019?  
 9 A That there was a determination there was a  
 10 NAV error? Yes.  
 11 Q And is it fair to say that HCMFA had  
 12 concluded that the loss of that NAV error was  
 13 going to be more than a million dollars prior to  
 14 May 2019?  
 15 A More than a million? Probably – yes.  
 16 Q Okay. Is there a reason that HCMFA waited  
 17 until May to have Highland pay it for the  
 18 compensation?  
 19 A I think that the whole process – as you  
 20 see, the resolution memo is in May to the board.  
 21 That was the conclusion of the overall process.  
 22 So our stance would be that that was when it was  
 23 the right time and everything was – the right  
 24 time to be sent.  
 25 MR. MORRIS: Okay. Can we put up

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1 Dustin Norris  
 2 on the screen a document that's been  
 3 marked as, I think, as Exhibit 13? I  
 4 don't know if you're able to get that,  
 5 La Asia.  
 6 MS. CANTY: Yup, I got it.  
 7 MR. MORRIS: Thank you.  
 8 (Exhibit 13 tendered.)  
 9 BY MR. MORRIS:  
 10 Q Are you aware, sir, that there came a  
 11 point in time when HCMFA amended its answer?  
 12 A Yes.  
 13 Q And I think topic –  
 14 A Topic 2 is our amended answer.  
 15 Q Okay. So that's the document that's in  
 16 front of you?  
 17 A Yes.  
 18 Q And you've seen that before; correct?  
 19 A Yes.  
 20 Q Okay.  
 21 MR. MORRIS: Can we turn to Page 5  
 22 of 9, please?  
 23 And if we can scroll to the bottom.  
 24 BY MR. MORRIS:  
 25 Q These are HCMFA's affirmative defenses; is

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1 Dustin Norris  
 2 A Yes.  
 3 Q – but that motion hasn't been granted;  
 4 right?  
 5 A To my understanding, no.  
 6 Q Okay. And you understand that your – the  
 7 answer that's up on the screen can't be amended  
 8 unless the Court grants the motion; right?  
 9 A I – if you tell me that that's the  
 10 process, I'll take that for what it's worth. I'm  
 11 not an attorney. I don't know the process.  
 12 Q Okay. So let's just look at this  
 13 document.  
 14 Is it fair to say that Paragraph 38  
 15 through 45 deals with –  
 16 A I'm going to grab the –  
 17 Q Yeah.  
 18 A – thing here so I can see it on my desk,  
 19 too.  
 20 Q Sure.  
 21 A Okay.  
 22 38?  
 23 Q Right.  
 24 A Okay.  
 25 Q Now – actually, a little background.

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1 Dustin Norris  
 2 that right?  
 3 A On the second amended answer, yes.  
 4 Q Yes.  
 5 A I'm sorry. The first amended answer, yes.  
 6 Q And as of today, is it your understanding  
 7 that this is HCMFA's operative pleading?  
 8 A No.  
 9 Q Has it been amended after this time?  
 10 A Yeah, we –  
 11 MR. RUKAVINA: Well, he doesn't  
 12 know what "operative pleading" means.  
 13 THE WITNESS: Oh.  
 14 MR. RUKAVINA: Yes, it is our  
 15 operative pleading, Dustin.  
 16 THE WITNESS: It is our operative  
 17 pleading then.  
 18 BY MR. MORRIS:  
 19 Q And I didn't mean to trick you. I  
 20 apologize. I just meant to say that this has not  
 21 been amended as of today; correct?  
 22 A We filed a – wait. Let me see what it's  
 23 called.  
 24 Q You filed a motion for permission to amend  
 25 it further –

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1 Dustin Norris  
 2 This amended complaint was prepared  
 3 after DC Sauter conducted an investigation  
 4 concerning the circumstances surrounding the two  
 5 notes that Highland was suing on; right?  
 6 A Yes. My understanding is it is after  
 7 he – so background, when he – we filed our  
 8 initial response, we didn't have access to the  
 9 HCMLP employees during that time period. They  
 10 were not permitted to talk to us about things like  
 11 this. And so he did the best he could to prepare  
 12 a response. But once they were mostly all fired  
 13 by HCMLP and formed their own company called  
 14 Skyview, he was able to talk to them on  
 15 particulars. As you note in his – his statement,  
 16 he was able to talk to Frank Waterhouse, where he  
 17 wasn't before, on this topic.  
 18 Q Right. So by the time this document has  
 19 been prepared, HCMFA had copies of the notes that  
 20 Highland was suing on for six months; right?  
 21 Because the lawsuit was commenced in January, and  
 22 the notes were attached as exhibits to the  
 23 complaint; right?  
 24 A Yes. This is July 6th this is filed.  
 25 Q Right. Okay. So this is filed almost six



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1 Dustin Norris  
 2 months after the complaint is filed; right?  
 3 A More like a five-month – five months and  
 4 a week, but yeah.  
 5 Q All right. I won't quarrel with you.  
 6 A Or five and a half – five and a half  
 7 months, yeah.  
 8 Q Okay.  
 9 A Whether you consider that –  
 10 Q Okay.  
 11 A – six full months or not.  
 12 Q So –  
 13 A We know the dates January 22nd and  
 14 July 6th.  
 15 Q Okay. So for that entire time period of  
 16 time, there's no dispute that HCMFA had in its  
 17 possession copies of the notes that Highland was  
 18 suing on; correct?  
 19 A I'm looking at the original – you said  
 20 they were attached, but I –  
 21 Q Yeah.  
 22 A If you want to show me the original notes  
 23 on the original filing.  
 24 Q Well, I asked you to look at the original  
 25 complaint. I think – was the original complaint

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1 Dustin Norris  
 2 time HCMFA filed this amended answer on July 6th;  
 3 correct?  
 4 A Yes.  
 5 Q And this amended answer was filed because  
 6 HCMFA had a – had previously made a motion to the  
 7 Court for leave to amend its answer; correct?  
 8 MR. RUKAVINA: That's correct,  
 9 Dustin.  
 10 He wouldn't know about that, but  
 11 that's all correct.  
 12 BY MR. MORRIS:  
 13 Q Okay. Well, you're familiar with the  
 14 Sauter declaration; right?  
 15 A I am.  
 16 Q And the Sauter declaration purports to  
 17 describe an investigation that Mr. Sauter  
 18 undertook to determine the circumstances  
 19 surrounding the notes; is that fair?  
 20 A I don't know if I'd characterize it  
 21 investigation, but he was tasked with – and I've  
 22 got it right here. I would refer you to the  
 23 agreement on – or his – to his declaration on –  
 24 Q How would you – how would you  
 25 characterize the work that he did? An

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1 Dustin Norris  
 2 Topic Number 1? No. It's just the answer.  
 3 In looking at the answer, did you look  
 4 at the original complaint?  
 5 A Yes.  
 6 Q Do you recall seeing that the notes were  
 7 attached to the original complaint?  
 8 A I looked at thousands of pages in  
 9 preparation, so I just – I could take your word  
 10 for it if you say it's in there, or if you want to  
 11 show it to me, we can look at it.  
 12 MR. RUKAVINA: They are, Dustin.  
 13 They are.  
 14 MR. MORRIS: Yeah. I think you'll  
 15 have to take my word for it. Thank you,  
 16 Davor, for confirming my word.  
 17 BY MR. MORRIS:  
 18 Q So let me just try this again to make it  
 19 clean.  
 20 Based on my representation, that  
 21 Mr. Rukavina has agreed with, that the notes that  
 22 Highland are suing on were attached to its  
 23 complaint in January, you would agree with me that  
 24 HCMFA had the notes in its possession from at  
 25 least the time the complaint was filed until the

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1 Dustin Norris  
 2 investigation? An analysis? What word do  
 3 you – would you use? Due diligence? How would  
 4 you characterize the work that Mr. Sauter did  
 5 that's set forth in his declaration?  
 6 A I – I'm looking here. I want to see how  
 7 he characterizes it.  
 8 I think he does a very good job of  
 9 explaining.  
 10 My investigation would be of the  
 11 following. So he calls it an investigation.  
 12 Q Okay. So HCMFA would agree that after  
 13 Mr. Waterhouse left the employ of Highland, that  
 14 DC Sauter conducted an investigation into the  
 15 circumstances surrounding the notes that Highland  
 16 was suing on; correct?  
 17 A Correct.  
 18 Q And as part of that investigation, he  
 19 spoke with Mr. Waterhouse; correct?  
 20 A Yes.  
 21 Q And as part of that investigation, he  
 22 spoke with Mr. Dondero; correct?  
 23 A I believe so, but let me – let me confirm  
 24 in his statement.  
 25 Because I believe in – yeah.

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1 Dustin Norris  
 2 Q Is that correct, that he spoke with  
 3 Mr. Dondero in connection with his investigation?  
 4 A I'm – I'm seeing what he rep'ed to in his  
 5 statement.  
 6 Q And does his statement say that? I don't  
 7 have it in front of me.  
 8 A I don't know. That's what I'm looking at.  
 9 Q And you don't know, independently of the  
 10 document, whether Mr. Sauter spoke with  
 11 Mr. Dondero as part of his investigation?  
 12 A I know he did. I know he talked  
 13 throughout from when we received the original  
 14 complaint on. I just – you're asking about the  
 15 time frame between filing the original filing.  
 16 And I think he may have spoken with him before  
 17 that, too, but I – I just want to take a...  
 18 So at the time – this is on  
 19 March 1st, filed the defendant's original answer.  
 20 At that – at the time the debtor filed a  
 21 complaint, I promptly undertook an internal review  
 22 of the background facts concerning the notes. I  
 23 had no knowledge of them since I had not been  
 24 employed by HCMFA. And a few employees of HCMLP  
 25 had no knowledge of notes. I also discussed the

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1 Dustin Norris  
 2 A Yeah. I have a hard copy here, although I  
 3 may have mixed my documents.  
 4 Yeah, it was based on additional facts  
 5 that weren't available at the time of the original  
 6 response.  
 7 Q Okay. And is it fair to say that  
 8 Paragraphs 38 through 45 relate to the affirmative  
 9 defense that Highland was responsible for the NAV  
 10 error, and the \$7.4 million payment was intended  
 11 to be compensation for Highland's negligent work?  
 12 A Sorry. Can you ask that one more time?  
 13 There was a couple parts there.  
 14 Q No problem.  
 15 Is it fair to say that  
 16 Paragraphs 35 – withdrawn.  
 17 Is it fair to say that Paragraphs 38  
 18 to 45 relate to HCMFA's affirmative defense that  
 19 the \$7.4 million that was transferred from  
 20 Highland to HCMFA in May 2019 was intended to be  
 21 compensation for Highland's negligent work in  
 22 connection with the NAV error and not in the form  
 23 of a loan?  
 24 A You said 38 to 42?  
 25 Q 38 to 45.

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1 Dustin Norris  
 2 notes of James Dondero, formerly the CEO of the  
 3 debtor, Mr. Dondero.  
 4 So this is March 1st when that first  
 5 filing was made. So he did speak with Mr. Dondero  
 6 prior, and then I believe the source of the  
 7 additional information was being able to speak  
 8 with Frank Waterhouse and Will Mabry.  
 9 Q Okay. And is it fair to say that the  
 10 amended complaint is based on Mr. Sauter's  
 11 investigation?  
 12 A Yes, I believe so.  
 13 Q Yeah.  
 14 A Yes.  
 15 Q That's why HCMFA amended its complaint.  
 16 It's because Mr. Sauter had undertaken this  
 17 investigation, and he learned what he believed  
 18 were relevant facts, and those facts are described  
 19 in his declaration, and they formed the basis of  
 20 the affirmative defenses that we're looking at now  
 21 in the amended answer; fair?  
 22 A Let me pull up the amended answer just  
 23 to –  
 24 Q It's up on the screen, but if you have a  
 25 hard copy, that's fine.

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1 Dustin Norris  
 2 A 38 to 45.  
 3 Yeah, it – the NAV error items are  
 4 included in there as one of our defenses.  
 5 Q Right.  
 6 A 43 and 44 and 45 discuss additional  
 7 defenses related to the note and who may or may  
 8 not have signed the note and who had authority to  
 9 sign the note.  
 10 Q Okay.  
 11 MR. MORRIS: Can you – can we turn  
 12 to Paragraph 42?  
 13 THE WITNESS: Yes.  
 14 BY MR. MORRIS:  
 15 Q Do you see the first four – first few  
 16 words in Paragraph 42 are, quote: "The defendant  
 17 accepted responsibility for the NAV error"?  
 18 A Yes.  
 19 Q Okay. "Defendant" there refers to  
 20 Highland Capital Management, LP; correct?  
 21 A No. I believe –  
 22 Q Oh, I apologize. I apologize.  
 23 A Thank you.  
 24 Q It's HCMFA; right?  
 25 A HCMFA.

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1 Dustin Norris  
 2 Q Okay. And is – did – did HCMFA accept  
 3 responsibility for the NAV error?  
 4 A They did. They – they are the adviser,  
 5 and there's already – in the next sentence, HCMLP  
 6 then accepted that they had a contract with and  
 7 accepted responsibility.  
 8 Q Okay. And so when did the plaintiff  
 9 accept responsibility for having caused the NAV  
 10 error?  
 11 A Again, going back to – this was always  
 12 known and communicated that it was HCMLP  
 13 employees. It was the valuation services they  
 14 were performing. The legal and compliance team  
 15 was all outsourced in the shared services  
 16 agreement.  
 17 And that was – again, there's not a  
 18 singular determination; but Jim Dondero, as  
 19 president, I would say effectuated that with the  
 20 payment of the NAV – for the NAV error.  
 21 Q So you can't tell me when the plaintiff  
 22 accepted responsibility for having caused the NAV  
 23 error; correct?  
 24 A Not a specific date.  
 25 Q Okay. And it's HCMFA's position that Jim

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1 Dustin Norris  
 2 Do you see that?  
 3 A Yes.  
 4 Q Is that statement accurate?  
 5 MR. RUKAVINA: I'll object to  
 6 vagueness, given the different points in  
 7 time.  
 8 BY MR. MORRIS:  
 9 Q Does HCMFA believe that that statement is  
 10 accurate today?  
 11 A We know now. It's come out in discovery  
 12 that – and it was represented that Mr. Dondero  
 13 transferred money to Highland who transferred it  
 14 to HCMFA. And I don't know – and it says "or,"  
 15 "or its own funds." So it's accurate whether  
 16 through insurance or its own funds.  
 17 But at the time of this writing, we  
 18 didn't have all the details and have firmed up  
 19 those details, and I would refer you to  
 20 depositions and the pleadings and our additional  
 21 statement regarding cash and movement.  
 22 Q Did Highland file an insurance claim, to  
 23 the best of your knowledge?  
 24 A Not that I know of.  
 25 Q Did you ever ask anybody, in preparation

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1 Dustin Norris  
 2 Dondero, in his capacity as the president of  
 3 Highland Capital Management, LP, accepted  
 4 responsibility on behalf of Highland Capital  
 5 Management, LP, for having caused the NAV error?  
 6 A He, and in addition all of the employees  
 7 involved. Right? The valuation team members,  
 8 Frank Waterhouse was CFO, Dave Klos overseeing the  
 9 valuation process, they were all Highland  
 10 employees, and Jim Dondero as well as president  
 11 recognized that based on all the communications  
 12 and conversations they would have had.  
 13 MR. MORRIS: Okay. I'm going to –  
 14 I'm going to move to strike.  
 15 BY MR. MORRIS:  
 16 Q And I'm going to ask you to listen  
 17 carefully to my question.  
 18 Who had the authority to accept, on  
 19 behalf of plaintiff, the responsibility for having  
 20 caused the NAV error?  
 21 A Ultimately Jim Dondero, as president here,  
 22 had that authority.  
 23 Q Okay. And then it says, quote: "The  
 24 plaintiff ultimately, whether through insurance or  
 25 its own funds, compensated the defendant."

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1 Dustin Norris  
 2 for today's deposition, about that sentence in  
 3 Paragraph 42 and whether or not Highland had ever  
 4 filed an insurance claim?  
 5 A I didn't ask about that sentence, but we  
 6 did discuss whether Highland had filed an  
 7 insurance claim. And to our knowledge, we don't  
 8 know that they have. I'd, again, ask you as their  
 9 attorney. That would be a question for you.  
 10 Q Well, with all due respect, you have  
 11 complete and unfettered access to the former  
 12 president and CFO of Highland; correct?  
 13 A I do, but – I'm sorry. You said  
 14 president and CEO?  
 15 Q The former president and CFO.  
 16 A President and – I don't have unfettered  
 17 access to the former CFO.  
 18 MR. RUKAVINA: I'll – I'll object  
 19 to that. We have been prohibited by  
 20 Waterhouse's attorney from discussing the  
 21 matter with him.  
 22 BY MR. MORRIS:  
 23 Q You're – you're not allowed – did – did  
 24 you – did HCMFA ask Mr. Waterhouse at any time  
 25 whether Highland had filed an insurance claim?

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1 Dustin Norris  
 2 A Not – not that I know of. However, we've  
 3 been not permitted to talk to him related to this,  
 4 based on his attorney. So –  
 5 Q Well, when did –  
 6 A We never really discussed – go ahead.  
 7 Q I'm sorry.  
 8 A Go ahead. You were –  
 9 Q I was just going to ask: When did that  
 10 prohibition go into effect?  
 11 MR. RUKAVINA: John, the witness  
 12 wouldn't know that. It's about three  
 13 months ago that the lady from Baker  
 14 McKenzie, Deb – I don't know her last  
 15 name – got angry at me because I tried to  
 16 talk to Frank and she said, "Absolutely  
 17 not. You're forbidden, and you're  
 18 violating your ethical rules if you do."  
 19 MR. MORRIS: So sometime in  
 20 September?  
 21 MR. RUKAVINA: I would say August  
 22 or September.  
 23 MR. MORRIS: Okay.  
 24 BY MR. MORRIS:  
 25 Q But sometime – but you had – HCMFA had

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1 Dustin Norris  
 2 filed is July 2006; correct?  
 3 A July 6th, not July 2006.  
 4 Q I apologize. Let me ask the question  
 5 again.  
 6 This amended answer was filed on  
 7 July 6th, 2021; correct?  
 8 A Correct.  
 9 Q And it was filed after Mr. Sauter  
 10 conducted his investigation to determine the  
 11 circumstances surrounding the note; correct?  
 12 A Uh-huh, correct.  
 13 Q And it was filed after HCMFA had had in  
 14 its possession since January copies of the notes  
 15 that Highland was suing on; correct?  
 16 A Correct.  
 17 Q And it was filed at a time before any  
 18 limitation or prohibition was placed on HCMFA's  
 19 ability to communicate with Mr. Waterhouse since  
 20 the time he had left Highland; correct?  
 21 A Sorry. You want to repeat the first part  
 22 of that?  
 23 Q Sure.  
 24 It was filed at a time after  
 25 Mr. Waterhouse left the employ of Highland but

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1 Dustin Norris  
 2 complete, unfettered access to Mr. Waterhouse from  
 3 the time he left Highland in early March 2021  
 4 until at least the end of July 2021; right?  
 5 A Yeah. And I would add a point to  
 6 Mr. Sauter's declaration and our pleadings and the  
 7 depositions for the various details of what we've  
 8 discovered since. However, the unfettered access  
 9 was also inhibited – or – or Mr. Sauter  
 10 represented this. There was a lot going on in  
 11 March, April, May of 2021.  
 12 Q Yeah.  
 13 A And we were trying to lift out an entire  
 14 business and keep everything afloat, and – as  
 15 you're very aware. And so there was a lot going  
 16 on.  
 17 Q Right. Right.  
 18 Do you see – can we go to  
 19 Paragraph 43, please?  
 20 A Yes.  
 21 MR. MORRIS: If we could just  
 22 scroll down to Paragraph 43, please.  
 23 Thank you.  
 24 BY MR. MORRIS:  
 25 Q Now, again, this amended complaint is

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1 Dustin Norris  
 2 before there was any limitation or restriction  
 3 imposed on HCMFA's ability to communicate with  
 4 Mr. Waterhouse?  
 5 A Yes. Once he left in March of 2021 is  
 6 when that happened. And, again, in March, we  
 7 were, on both sides, the creation of Skyview, as  
 8 well as our employees, trying as – doing  
 9 everything we could do to transition the  
 10 businesses and services. And so that was an  
 11 important time.  
 12 MR. MORRIS: Okay. Move to strike.  
 13 BY MR. MORRIS:  
 14 Q I just want to confirm that HCMFA had  
 15 unfettered access to Mr. Waterhouse between the  
 16 time he left Highland and the time this amended  
 17 answer was filed in July.  
 18 A We had access to him to ask him what we  
 19 needed. Unfettered in the sense of, "Hey, we can  
 20 access you whenever we need," no, because there  
 21 was a lot involved in launching and – launching  
 22 of Skyview and creating all the services needed  
 23 for our funds since we – HCMLP is sharing  
 24 services provided –  
 25 Q Does Mr. Sauter have a role with HCMFA?

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1 Dustin Norris  
 2 A I don't believe so.  
 3 Q Do you know who authorized him to conduct  
 4 this investigation?  
 5 A Yeah. It would have been management,  
 6 Mr. Dondero, and probably our outside counsel. At  
 7 the time, we had been utilizing Highland's  
 8 services as legal services, all the way up until  
 9 the end of February.  
 10 There were legal and compliance  
 11 services that were part of the shared services  
 12 agreement. There was an entire legal team, entire  
 13 team of litigators who were unable to work on  
 14 this.  
 15 Mr. Sauter was a real estate attorney  
 16 for us, and he picked up the slack and was  
 17 assigned by Mr. Dondero to help in these causes  
 18 working with outside counsel, because HCMLP was  
 19 not providing or no longer able to provide those  
 20 legal services based on their – their view, even  
 21 though they were contracted to do those.  
 22 Q That contract ended at the end of  
 23 February; isn't that right?  
 24 A That's correct.  
 25 Q And with the exception of a couple of

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1 Dustin Norris  
 2 don't remember all the specific details, but the  
 3 legal team at Highland – or at Skyview was not  
 4 working on this.  
 5 Q Okay.  
 6 A It was probably professional – I don't  
 7 know the standards, but they were unable to work  
 8 on – on this.  
 9 Q All right. But you would agree that at  
 10 the time HCMFA asked the court for permission to  
 11 amend its answer, it did so based on Mr. Sauter's  
 12 investigation; correct?  
 13 A Yes, and I would caveat that subject to  
 14 our – our pleadings.  
 15 Q Right. And I think I moved to strike your  
 16 earlier answer, so let me try and ask the question  
 17 again.  
 18 Did Mr. Dondero authorize Mr. Sauter  
 19 to conduct the investigation?  
 20 A I don't have specific knowledge of that.  
 21 Q All right. I think you used the phrase  
 22 "management." Did management authorize Mr. Sauter  
 23 to conduct this investigation on behalf of HCMFA?  
 24 A I don't know specifically who – who would  
 25 have asked him to do the – Jim and – Jim Dondero

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1 Dustin Norris  
 2 people, Highland's legal team migrated to Skyview  
 3 in early 2021; is that fair?  
 4 A Yes.  
 5 Q Okay. And among the people who migrated  
 6 were Stephanie Vitiello; correct?  
 7 A Yes.  
 8 Q And Isaac Leventon; correct?  
 9 A Correct.  
 10 Q And he's the chief litigation guy at  
 11 Highland prior to the bankruptcy; right?  
 12 A I – I don't know if that was Isaac or if  
 13 it was Scott Ellington. I don't know.  
 14 Q And Scott – Scott Ellington also  
 15 migrated; right?  
 16 A Correct.  
 17 Q So you had access to those folks for the  
 18 first six months of 2021; right?  
 19 A No. I would – our position is that those  
 20 individuals were unable to work on – even though  
 21 they had left, they were unable to work on  
 22 something of this nature.  
 23 I – I believe there was also a  
 24 preliminary injunction still in place where Jim or  
 25 his employees could not talk to Scott or Isaac. I

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1 Dustin Norris  
 2 asked him to help with the – the legal items, and  
 3 stepped in and help in the absence of HCMLP's  
 4 help.  
 5 Q Okay. And based on that investigation  
 6 looking at Paragraph 43, HCMFA took the position,  
 7 quote: "Waterhouse signed the two promissory  
 8 notes the subject of the complaint," close quote;  
 9 correct?  
 10 A That's right. It's our position that  
 11 at – and I'd refer you to our amended pleading  
 12 with additional information, but it's – it's our  
 13 position that Mr. Waterhouse saw the notes, was  
 14 confronted, discussed with DC, and said, "Look,  
 15 that's my signature. I signed them."  
 16 Q Okay. So that's – and it was on the  
 17 basis of Mr. Waterhouse's conversation with  
 18 Mr. Sauter that HCMFA wrote that sentence; is that  
 19 fair?  
 20 A I believe so. And I would refer you to  
 21 Mr. Sauter's declaration as well, which goes into  
 22 details on that.  
 23 Q And Mr. Sauter specifically said that  
 24 Mr. Waterhouse signed the notes; correct?  
 25 A We can look at Mr. Sauter's declaration.

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1 Dustin Norris  
 2 I – I believe he said he was – Mr. Waterhouse  
 3 told him he signed, but –  
 4 Q Right. And, in fact, HCMFA's position  
 5 throughout this entire case was that  
 6 Mr. Waterhouse signed the notes, but he did so by  
 7 mistake and without authority; correct?  
 8 A That's right. And if you look at the  
 9 depositions, he testified of that, that he didn't  
 10 remember signing them, and he didn't have a  
 11 recollection, and Mr. Dondero never told him to  
 12 sign it, and he never asked him whether – or  
 13 he – Mr. Dondero told him never – told him  
 14 shouldn't be – didn't – Mr. Dondero didn't tell  
 15 him it was a note, and he never asked if it should  
 16 be a note.  
 17 With this – this amended pleading,  
 18 the thought was he mistakenly thought it was a  
 19 note, because that was the practice for other  
 20 notes or other – other transfers of this  
 21 nature – not of this nature, but other transfers  
 22 between companies, and so he had papered it up as  
 23 a note.  
 24 But if you look at the depositions,  
 25 you'll see that additional details came out that

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1 Dustin Norris  
 2 A And then it says: "Upon information" –  
 3 Q That's –  
 4 A – "and belief, Waterhouse was not aware  
 5 that the payment from the plaintiff to defendant  
 6 were to compensate the defendant for the NAV  
 7 error."  
 8 Q I'm sorry. Where are you reading from?  
 9 Oh, that's 44?  
 10 A That's in number 44.  
 11 Q Okay.  
 12 A Yeah. "Waterhouse made a mistake in  
 13 preparing and signing the notes for the  
 14 defendant."  
 15 Q Right. Okay.  
 16 A But, again, I'll refer you to the  
 17 depositions and the evidence –  
 18 MR. MORRIS: Move to strike. It's  
 19 not responsive to my question.  
 20 BY MR. MORRIS:  
 21 Q Do you see in Paragraph 47 there's a  
 22 reference to "lack of consideration"?  
 23 A Yes.  
 24 Q Okay. What does that mean?  
 25 A My understanding is that there was no

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1 Dustin Norris  
 2 he told his controller, Mr. Klos, to transfer the  
 3 funds, and Mr. Klos then turned around and asked  
 4 Kristin to paper it up as a note, and to transfer  
 5 the cash. And Ms. Hendrix – Kristin Hendrix then  
 6 added Mr. Waterhouse's JPEG signature to the Word  
 7 document, which then was filed away.  
 8 So we – we, through the process of  
 9 depositions and discovery, were able to find more  
 10 information that Frank Waterhouse did not  
 11 remember. He didn't remember signing but said his  
 12 signature is on there, so he must have signed it.  
 13 MR. MORRIS: All right. I move to  
 14 strike. My question is really, really  
 15 simple.  
 16 BY MR. MORRIS:  
 17 Q Up until the time that you filed the  
 18 motion last night, HCMFA's publicly stated  
 19 position has always been that Frank Waterhouse  
 20 signed the notes, and that he did so by mistake  
 21 and without authority; correct?  
 22 A Correct. It says it here:  
 23 "Mr. Waterhouse made a mistake in preparing and  
 24 signing the notes for the defendant."  
 25 Q Okay. Good enough.

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1 Dustin Norris  
 2 consideration. We – there were notes, but there  
 3 was no payment for those notes. The payment was  
 4 for compensation related to the NAV error, so  
 5 there was no payment – or no compensation for  
 6 notes that had been drafted.  
 7 Q Okay. And the next defense there in  
 8 Paragraph 47 is "mutual mistake."  
 9 Do you see that?  
 10 A Correct.  
 11 Q Do you have any facts that support that,  
 12 that the mistake was mutual?  
 13 A Yeah. I – I would look to the  
 14 depositions. And if you go to the testimony of  
 15 Frank and Jim Dondero and David Klos and Kristin,  
 16 it was a clear path and a clear record of mutual  
 17 mistake.  
 18 Jim told Frank to transfer the money  
 19 for the NAV error. Frank then goes, tells  
 20 Mr. Klos, the controller, to go and transfer the  
 21 money, who tells Kristin to transfer the money –  
 22 or to make the transfer and to paper it up.  
 23 Kristin then papers it up, following the process  
 24 that she's always followed or she said she's  
 25 followed for many other notes.

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1 Dustin Norris  
 2 She lacked the authority to do so.  
 3 Mr. Klos lacked the authority. Mr. Waterhouse was  
 4 never told to make a note, and so the note itself  
 5 is drafted by an accountant without authority to  
 6 do so with a maker and a counterparty that is on  
 7 both sides of this, representing supposedly both  
 8 sides.  
 9 And our position is that the maker of  
 10 this – even if you look at the document, Frank  
 11 Waterhouse signs as maker, not as his position.  
 12 He's signing as the maker.  
 13 And so there's various aspects of this  
 14 that had errors on both sides, the – the position  
 15 of HCMFA where they thought they had authority and  
 16 the position of HCMLP.  
 17 Q Anything else, sir?  
 18 A I – I would refer you to the – again,  
 19 the depositions and our pleadings. But there's –  
 20 there's a host of support there.  
 21 Q Other than the deposition transcripts and  
 22 the – and HCMFA's pleadings, are you aware of any  
 23 document anywhere in the world that corroborates  
 24 the defense of mutual mistake?  
 25 A Other than the documents, the pleadings,

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1 Dustin Norris  
 2 let – let me take a look here again.  
 3 Q What is it you're looking at?  
 4 A This is the amended complaint.  
 5 Q Okay.  
 6 A Which paragraph was that again?  
 7 Q It's 47.  
 8 A 47.  
 9 Q Yeah. There's – it's a – there's –  
 10 A Mutual mistake.  
 11 Q – one of the defenses there. It's up on  
 12 the screen.  
 13 A Yeah.  
 14 Q There's "mutual mistake," and I just want  
 15 you to identify for me every document that HCMFA  
 16 is aware of that was created before the answer  
 17 date of March 1st, 2001 [sic], other than the JPEG  
 18 documents –  
 19 A I would – I would refer you to –  
 20 Q – that support or corroborate – that  
 21 support or corroborate the defense of mutual  
 22 mistake?  
 23 A Yeah. And I'd also point you to DC  
 24 Sauter's declaration.  
 25 Q Okay. That wasn't created before the

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1 Dustin Norris  
 2 and any schedules and other forms that are filed  
 3 with the court, there's – there's plenty there.  
 4 Q Okay. What schedules are you referring  
 5 to?  
 6 A I would say all of your supporting  
 7 schedules, all of your documentation, the notes  
 8 themselves, the – the Word documents that we  
 9 received as well in discovery that have the  
 10 metadata showing that Kristin Hendrix applied  
 11 Frank Waterhouse's JPEG signature.  
 12 Q Okay.  
 13 A All of those items as well as, again,  
 14 depositions all – of all those individuals.  
 15 Q So – so I just want to make sure that I  
 16 have this clear.  
 17 So you've got the JPEG documents.  
 18 You've got the deposition transcripts. You know  
 19 what? Let me restate the question.  
 20 You've identified the JPEG documents.  
 21 Other than the JPEG documents, are you aware of  
 22 any document in the world that was created before  
 23 the answer date that supports or corroborates the  
 24 defense of mutual mistake?  
 25 A I'm – again, I – I'd point to the –

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1 Dustin Norris  
 2 answer date; correct?  
 3 A Well, you're saying – you – it was  
 4 before the answer date.  
 5 Q Pardon me?  
 6 A The answer date being when we did the  
 7 amended answer?  
 8 Q No. Let me ask the question again.  
 9 A Yes, please. Sorry.  
 10 Q Can you identify any document in the  
 11 world, other than the JPEG documents, that support  
 12 or corroborate the defense of mutual mistake that  
 13 was created before March 1st, 2021?  
 14 A I got you.  
 15 The JPEG documents is the Word  
 16 documents with the metadata.  
 17 Q Correct.  
 18 A There were emails that went between the  
 19 accounting team on how to paper it up. That is in  
 20 your – your documentation as well, and I would  
 21 say any other document that's in the court  
 22 filings.  
 23 Q Can you identify them? That's kind of –  
 24 that's not really helpful to me.  
 25 A Yeah. I – there's the – there's an

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1 Dustin Norris  
 2 email – and this was used in depositions.  
 3 There's an email that went – was David Klos  
 4 instructing the group – or instructing Kristin to  
 5 send the cash and to record a note.  
 6 Q And you believe that – and it's HCMFA's  
 7 contention that that document supports their  
 8 position of mutual mistake. Do I have that right?  
 9 A Again, I'm not an attorney, so tying the  
 10 definition as little M, little M, I'm going to  
 11 have to say I don't know.  
 12 Q Okay. Other than the emails, the two  
 13 emails that you referenced and the JPEG documents,  
 14 can you identify any other document created before  
 15 May 1st – March 1st, 2021, that supports or  
 16 corroborates the defense of mutual mistake?  
 17 A There may be a document. I – I don't  
 18 know.  
 19 Q Okay.  
 20 A And, again, as you've seen, there's a lot  
 21 of stuff that's come out in discovery, and it's  
 22 important that testimony of – of those witnesses  
 23 is taken into account.  
 24 MR. MORRIS: Okay. Move to strike  
 25 the last portion of that answer.

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1 Dustin Norris  
 2 that Mr. Waterhouse lacked authority was that  
 3 Mr. Dondero did not specifically approve it?  
 4 A By nature, just the size of this note and  
 5 the nature of it would have required Mr. Dondero's  
 6 authority. And both Mr. Waterhouse and  
 7 Mr. Dondero testified to that in their deposition.  
 8 So I'd refer you to that. They both testified he  
 9 did not have the authority.  
 10 MR. MORRIS: I'm not sure that he  
 11 did, so I'm going to move to strike. The  
 12 testimony will be what the testimony will  
 13 be, not your characterization of it.  
 14 BY MR. MORRIS:  
 15 Q But what about the size of the notes  
 16 causes HCMFA to contend that Mr. Waterhouse didn't  
 17 have authority?  
 18 A A seven and a half million dollar note is  
 19 large enough to rise that Jim Dondero would have,  
 20 in any instance, authorized or needed to authorize  
 21 this, and he did not.  
 22 Q And is that because a \$7.4 million note is  
 23 a substantial obligation for HCMFA?  
 24 A You know, substantial – define  
 25 "substantial." It's sizeable. Right? It's seven

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1 Dustin Norris  
 2 Let's take a short break. I may be  
 3 done. It's 4:09. Can we just come back  
 4 in six minutes?  
 5 THE WITNESS: Yes. Thank you.  
 6 MR. RUKAVINA: Sure.  
 7 MR. MORRIS: Thank you.  
 8 (Recess from 3:09 p.m. to 3:19 p.m. CST)  
 9 BY MR. MORRIS:  
 10 Q Just a couple more questions, Mr. Norris.  
 11 If you can take a look again at  
 12 Paragraph 47 of the amended answer.  
 13 A Yes.  
 14 Q Do you see there's also a reference to,  
 15 quote, "the lack of authority from the defendant  
 16 to Waterhouse," close quote?  
 17 A Yes.  
 18 Q HCMFA does not dispute that Mr. Waterhouse  
 19 was an officer of HCMFA in May of 2019, does it?  
 20 A No, we don't dispute that.  
 21 Q And HCMFA doesn't dispute that  
 22 Mr. Waterhouse, in fact, served as the treasurer  
 23 of HCMFA in May 2019; correct?  
 24 A We don't, no.  
 25 Q Okay. Is the sole basis for the assertion

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1 Dustin Norris  
 2 and a half million dollars. Overall from the  
 3 operating business, it was meaningful. But seven  
 4 and a half million dollars in any entity would  
 5 have required Jim Dondero's approval.  
 6 Q And so can you explain to me why, if it  
 7 would have required his approval, nobody at HCMFA  
 8 noticed that it was carried on HCMFA's books and  
 9 records as a liability since May of 2019?  
 10 A Yeah. I think it's a simple mistake.  
 11 There were other notes of a similar nature in  
 12 size. And as Mr. Dondero testified, he wasn't  
 13 reviewing these regularly, the balance sheet.  
 14 Frank Waterhouse was. The accounting team was.  
 15 And so the HCMFA side, there was other notes of  
 16 similar size and nature. It didn't occur to them  
 17 that there was new notes. The accounting team, as  
 18 we've – which is our position, created the notes,  
 19 added the signature of Mr. Waterhouse, and then  
 20 they continued to record those as liabilities on  
 21 the balance sheet. And –  
 22 Q Is –  
 23 A – that was – you had – and, again, I'd  
 24 refer you to our pleadings and our amended  
 25 pleadings and the recent pleading yesterday that



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1 Dustin Norris  
 2 we discovered in the discovery process. But  
 3 Kristin Hendrix and Dave Klos and Frank Waterhouse  
 4 made it very clear what the process – and I would  
 5 say why – in answer to your question, it was  
 6 probably a little sloppy. It may have cut  
 7 corners. They should have received Mr. Dondero's  
 8 authorization, and they didn't. And so  
 9 that's – that's our position.  
 10 Q Does –  
 11 A And I would say these are all  
 12 professionals. These are good people. I don't  
 13 think they were dishonest. I think they made a  
 14 mistake. Professionals make mistakes, but this  
 15 was a costly mistake.  
 16 Q Did – does – does HCMFA contest that  
 17 Frank Waterhouse knew, on May 2nd and May 3rd,  
 18 2019, that the corporate accounting group was  
 19 going to paper these transactions as loans?  
 20 A Again, I would refer you to the actual  
 21 depositions and pleadings – and our pleadings.  
 22 But our position is – sorry. One more time, do  
 23 you want to ask the question?  
 24 Q Yeah. I think you need to – I want to  
 25 try to finish up, and I really appreciate your

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1 Dustin Norris  
 2 again, refer you to all the pleadings, our  
 3 pleadings and depositions that – of these  
 4 individuals. There's – there's a lot of support  
 5 there.  
 6 Q Right.  
 7 Have you seen the emails from May 2nd  
 8 and May 3rd?  
 9 A I can't remember if they were included in  
 10 your exhibits, but I know they were discussed in  
 11 detail in the depositions from Dave Klos and  
 12 Kristin and Frank.  
 13 Q Right. Okay.  
 14 MR. MORRIS: I have no further  
 15 questions. This is not particularly  
 16 helpful. Thanks.  
 17 MR. RUKAVINA: Okay. I'll reserve  
 18 questions. Thank you.  
 19 MR. MORRIS: Okay. Thanks a lot.  
 20 MR. RUKAVINA: Thank you.  
 21 (Off the record at 3:25 p.m. CST)  
 22  
 23  
 24  
 25

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1 Dustin Norris  
 2 patience.  
 3 MR. RUKAVINA: And I'll just say,  
 4 John, that was a bit of a confusing  
 5 question.  
 6 MR. MORRIS: Okay. And that's  
 7 fair. Let me try again.  
 8 BY MR. MORRIS:  
 9 Q Does HCMFA contest that Frank Waterhouse  
 10 knew, on May 2nd and May 3rd, 2019, that the  
 11 corporate accounting group was going to paper the  
 12 transfers from Highland as loans?  
 13 A Did we contest that he knew that?  
 14 Q Correct.  
 15 A I think his testimony speaks – I'll refer  
 16 you to his testimony. I think he testified that  
 17 he didn't know, right? He didn't know that  
 18 they – yes, he was copied on an email, but he  
 19 didn't have any recollection that they were  
 20 papered up as a loan.  
 21 Q Okay. And on the basis of that testimony,  
 22 does HCMFA now contend that Mr. Waterhouse didn't  
 23 know, in May of 2019, that these transfers were  
 24 papered as loans?  
 25 A I would say that's part of it. I would,

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1 IN THE UNITED STATES BANKRUPTCY COURT  
 2 FOR THE NORTHERN DISTRICT OF TEXAS  
 3 DALLAS DIVISION  
 4 In re: )Chapter 11  
 5 )  
 6 HIGHLAND CAPITAL MANAGEMENT, LP, )  
 7 )Case No.  
 8 Debtor. )19-34054-SGJ-11  
 9 )  
 10 HIGHLAND CAPITAL MANAGEMENT, LP, )  
 11 )  
 12 Plaintiff, )  
 13 )  
 14 vs. )Advisory Proceeding No.  
 15 )21-03004  
 16 NEXPOINT ADVISORS, LP; JAMES )  
 17 DONDERO; NANCY DONDERO; and THE )  
 18 DUGABOY INVESTMENT TRUST, )  
 19 )  
 20 Defendants. )  
 21 )  
 22 )  
 23 )  
 24 )  
 25 )

REPORTER'S CERTIFICATION  
 REMOTE DEPOSITION OF  
 DUSTIN NORRIS  
 December 1, 2021  
 I, Rebecca A. Graziano, Certified Shorthand  
 Reporter in and for the State of Texas, hereby  
 certify to the following:  
 That the witness, DUSTIN NORRIS, was duly  
 sworn and that the transcript of the oral  
 deposition is a true record of the testimony given  
 by the witness;  
 I further certify that pursuant to FRCP Rule  
 30(f)(1) that the signature of the deponent:  
 \_\_\_\_\_ was requested by the deponent or a  
 party before the completion of the deposition and

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1 returned within 30 days from date of receipt of  
 2 the transcript. If returned, the attached Changes  
 3 and Signature Page contains any changes and the  
 4 reasons therefor.  
 5 \_\_\_\_\_ was not requested by the deponent or a  
 6 party before the completion of the deposition.  
 7 I further certify that I am neither attorney  
 8 nor counsel for, related to, nor employed by any  
 9 of the parties to the action in which this  
 10 testimony was taken.  
 11 Further, I am not a relative or employee of  
 12 any attorney of record in this cause, nor do I  
 13 have a financial interest in the action.  
 14 Subscribed and sworn to on this 1st day of  
 15 December, 2021.  
 16  
 17  
 18  
 19  
 20 \_\_\_\_\_  
 Rebecca A. Graziano, CSR, RMR, CRR  
 21 Texas CSR 9306  
 Expiration: 07/31/22  
 22 California CSR 14407  
 Expiration: 09/30/22  
 23 Illinois CSR 084.004659  
 Expiration: 05/31/23  
 24  
 25

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ERRATA SHEET

1  
 2 Case Name:  
 3 Deposition Date:  
 4 Deponent:  
 5 Pg. No. Now Reads Should Read Reason  
 6 \_\_\_\_\_  
 7 \_\_\_\_\_  
 8 \_\_\_\_\_  
 9 \_\_\_\_\_  
 10 \_\_\_\_\_  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_  
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 15 \_\_\_\_\_  
 16 \_\_\_\_\_  
 17 \_\_\_\_\_  
 18 \_\_\_\_\_  
 19 \_\_\_\_\_  
 20  
 21 \_\_\_\_\_  
 22 Signature of Deponent  
 SUBSCRIBED AND SWORN BEFORE ME  
 23 THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.  
 24 \_\_\_\_\_  
 25 (Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

<b>\$</b>	<b>12-and-a-half</b> 148:12	<b>2.4-million-dollar</b> 51:14	81:5	51:21 54:24 127:17 194:17 195:10 196:8
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## **EXHIBIT 19**

1 IN THE UNITED STATES BANKRUPTCY COURT  
2 FOR THE NORTHERN DISTRICT OF TEXAS  
3 DALLAS DIVISION

4 IN RE: ) Chapter 11  
5 HIGHLAND CAPITAL ) Case No.  
MANAGEMENT, LP, ) 19-34054-  
6 Debtor. ) sgj11  
----- )  
7 HIGHLAND CAPITAL )  
MANAGEMENT, LP, ) Adversary  
8 ) Proceeding  
Plaintiff, ) No.  
9 ) 21-03004  
vs. )  
10 )  
HIGHLAND CAPITAL )  
11 MANAGEMENT FUND ADVISORS, )  
LP, )  
12 )  
Defendant. )  
13 ----- )

14  
15  
16

17 REMOTE ZOOM DEPOSITION OF DENNIS C. SAUTER  
18 Wednesday, November 17, 2021

19  
20  
21  
22

23 Reported by:  
24 Stacey L. Daywalt  
25 JOB NO. 202810

Page 2

1  
2  
3           Wednesday, November 17, 2021  
4           1:08 p.m.  
5  
6  
7           Remote Zoom Deposition of DENNIS C.  
8 SAUTER, held before Stacey L. Daywalt, a Court  
9 Reporter and Notary Public of the District of  
10 Columbia.  
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Page 4

1           D. Sauter  
2 DENNIS C. SAUTER,  
3           called as a witness, having been  
4 duly sworn by a Notary Public, was examined and  
5 testified as follows:  
6  
7 EXAMINATION BY  
8 MR. MORRIS:  
9   Q. Can you please state your name for  
10 the record.  
11   A. Dennis Sauter.  
12   Q. Good afternoon, Mr. Sauter. My name  
13 is John Morris. I'm an attorney at Pachulski  
14 Stang Ziehl & Jones. We are counsel to the  
15 reorganized Highland Capital Management, LP.  
16       Are you aware of that?  
17   A. Yes, sir.  
18   Q. Okay. And we're here for your  
19 deposition today. Correct?  
20   A. Yes, sir.  
21   Q. And I've examined you previously.  
22 Is that right?  
23   A. I don't believe so.  
24   Q. Okay. Have you ever been deposed  
25 before?

Page 3

1 APPEARANCES:  
2 (All appearances via remote Zoom)  
3  
4 PACHULSKI STANG ZIEHL & JONES  
5 Attorneys for Plaintiff  
6       780 Third Avenue  
7       New York, New York 10017  
8 BY: JOHN MORRIS, ESQ.  
9  
10 MUNSCH HARDT KOPF & HARR  
11 Attorneys for Defendant  
12       500 North Akard Street  
13       Dallas, Texas 75201  
14 BY: DAVOR RUKAVINA, ESQ.  
15  
16 STINSON LLP  
17 Attorneys for James Dondero and Nancy  
18 Dondero  
19       3102 Oak Lawn Avenue  
20       Dallas, Texas 75219  
21 BY: MICHAEL AIGEN, ESQ.  
22  
23 ALSO PRESENT:  
24  
25       LA ASIA CANTY

Page 5

1           D. Sauter  
2   A. I don't think so.  
3   Q. Okay. So very simple ground rules.  
4       I'm going to ask you a series of  
5 questions, and it's important that you allow me  
6 to finish my question before you begin the  
7 answer.  
8       Is that fair?  
9   A. Yes, sir.  
10   Q. And I will certainly attempt to do  
11 the same for you and – insofar as I will  
12 attempt to allow you to finish your answer  
13 before I begin my question.  
14       But if I fail to do that, will you  
15 let me know?  
16   A. I will.  
17   Q. If there's anything that I ask you  
18 that you don't understand, will you let me know  
19 that?  
20   A. I will.  
21   Q. If you want to take a break at any  
22 time, just let me know and I'll try to  
23 accommodate you. I'd only ask that you don't  
24 ask for a break while a question is pending.  
25       Is that fair?

Page 6

1 D. Sauter  
 2 A. That's fair.  
 3 Q. Okay. Do you have a license to  
 4 practice law, sir?  
 5 A. I do.  
 6 Q. In what states are you admitted to  
 7 practice?  
 8 A. Just Texas.  
 9 Q. When did you obtain your license?  
 10 A. November of 2001.  
 11 Q. And did you graduate from law  
 12 school?  
 13 A. I did.  
 14 Q. Where did you graduate from law  
 15 school?  
 16 A. Southern Methodist University.  
 17 Q. And can you describe for me your  
 18 employment history from the time you graduated  
 19 law school until today.  
 20 A. Sure.  
 21 Out of law school I began at a firm  
 22 called Winstead Sechrest & Minick. And I was  
 23 there just till tax day, so April 15 of 2002,  
 24 when my group moved to a firm at the time that  
 25 was called Godwin Gruber. I was at Godwin

Page 8

1 D. Sauter  
 2 Nexpoint, did you have any particular expertise  
 3 in a specified area of the law?  
 4 A. For about the last ten years, real  
 5 estate.  
 6 It was, before that, kind of a  
 7 hybrid of construction related litigation,  
 8 landlord-tenant disputes, you know,  
 9 foreclosures. It was all real estate related  
 10 litigation and then real estate transactional  
 11 work.  
 12 Q. How did you come to become employed  
 13 by Nexpoint?  
 14 A. I had worked with the folks here at  
 15 Nexpoint for my entire tenure at Wick Phillips,  
 16 and they gave me an offer and I accepted.  
 17 Q. What offer did they give you? What  
 18 position?  
 19 A. I was hired to be general counsel of  
 20 real estate.  
 21 Q. Are you still the general counsel of  
 22 real estate?  
 23 A. I'm now the general counsel of  
 24 Nexpoint.  
 25 Q. When did you become the general

Page 7

1 D. Sauter  
 2 Gruber until 2006.  
 3 And I went in-house with a  
 4 development firm called St. Ives Realty. I was  
 5 there until 2009.  
 6 And in 2009, I went back to work  
 7 with the group I'd worked with before but now  
 8 it was called Langley Weinstein. I was with  
 9 Langley Weinstein until December 31 of '13.  
 10 And in 2014, I started at Wick  
 11 Phillips Gould & Martin, and I was at Wick  
 12 Phillips until February of 2020 when I began at  
 13 Nexpoint.  
 14 Q. And while you were at Nexpoint – I  
 15 mean, withdrawn.  
 16 While you were at Wick Phillips, did  
 17 you provide services to Highland or any of its  
 18 affiliates?  
 19 A. I provided services primarily to  
 20 Nexpoint advisors and its wholly owned  
 21 subsidiaries.  
 22 I did have occasion to do a couple  
 23 of discrete engagements for – I think they  
 24 were CLOs but managed by Highland.  
 25 Q. Prior to the time that you joined

Page 9

1 D. Sauter  
 2 counsel of Nexpoint?  
 3 A. I don't recall exactly, but I would  
 4 say April or May of this year.  
 5 Q. All right. So from approximately  
 6 February of 2020 until approximately April of  
 7 2021, you were the general counsel of real  
 8 estate, and since approximately April of 2021  
 9 you were – you have been the general counsel  
 10 of Nexpoint.  
 11 Do I have that right?  
 12 A. Correct.  
 13 Q. Was there a general counsel of  
 14 Nexpoint during the time you served as general  
 15 counsel of real estate?  
 16 A. There was not.  
 17 Generally the way things worked is  
 18 Scott Ellington was general counsel at Highland  
 19 Capital, and most of the legal department  
 20 reported to him. I was the one attorney that  
 21 was not under him.  
 22 So no, there was not.  
 23 Q. Okay. To whom do you report today?  
 24 A. Matt McGraner.  
 25 Q. And what is Mr. McGraner's title?



Page 10

1 D. Sauter  
 2 A. I believe it's managing director.  
 3 Q. When did you begin reporting to  
 4 Mr. McGraner?  
 5 A. The day I was hired.  
 6 Q. What are your duties and  
 7 responsibilities today as the general counsel  
 8 of Nexpoint?  
 9 A. A lot different than I anticipated  
 10 when I came on.  
 11 Q. Fair.  
 12 A. It's a little bit of everything. I  
 13 get lots of questions from lots of different  
 14 people.  
 15 As you can imagine, there's been  
 16 quite a shuffle with the Skyview formation,  
 17 people leaving, people staying, and so, you  
 18 know, it's been fairly fluid. So I try to  
 19 handle whatever somebody brings me.  
 20 Q. In your capacity as general counsel,  
 21 do you have any responsibility for overseeing  
 22 Nexpoint's litigation matters?  
 23 A. I do.  
 24 Q. Okay. And do you have  
 25 responsibility for overseeing Nexpoint's

Page 12

1 D. Sauter  
 2 Highland Capital Management Fund Advisors, LLP?  
 3 A. I'm not.  
 4 Q. You are not?  
 5 A. I'm not the general counsel of  
 6 Highland Capital Management Fund Advisors.  
 7 Q. Okay. Can we refer to that entity  
 8 as HCMFA today?  
 9 A. Yes, sir.  
 10 Q. Do you have any title or role with  
 11 HCMFA today?  
 12 A. I don't have any official capacity  
 13 with HCMFA, although I do perform work from  
 14 time to time for HCMFA.  
 15 Q. Okay. Does HCMFA have a general  
 16 counsel, to the best of your knowledge?  
 17 A. It does not.  
 18 Q. Does HCMFA have any officers today,  
 19 to the best of your knowledge?  
 20 A. It does, but I'm not sure I can name  
 21 them off to you.  
 22 Q. Okay. What services do you provide  
 23 to HCMFA?  
 24 A. Again, like other affiliated  
 25 entities, when it has legal needs that meet my

Page 11

1 D. Sauter  
 2 defense of the lawsuit that Highland has  
 3 commenced against it?  
 4 MR. RUKAVINA: Allow me to interject  
 5 just a little bit here, John.  
 6 You subpoenaed Mr. Sauter in the  
 7 HCMFA lawsuit.  
 8 Why are you asking him all about  
 9 this Nexpoint?  
 10 MR. MORRIS: Just because he told me  
 11 that's where he works.  
 12 MR. RUKAVINA: Yeah, that's fine.  
 13 I mean, I'm not trying to be rude.  
 14 Just --  
 15 MR. MORRIS: I appreciate that.  
 16 MR. RUKAVINA: -- if you're --  
 17 (Simultaneous crosstalk.)  
 18 MR. MORRIS: Duty noted. Thank you,  
 19 Davor.  
 20 THE REPORTER: Please watch the  
 21 overlap of talking. Thank you.  
 22 BY MR. MORRIS:  
 23 Q. Mr. Sauter, Mr. Rukavina brings up a  
 24 good point.  
 25 Are you also the general counsel of

Page 13

1 D. Sauter  
 2 expertise, people bring it to me and I work on  
 3 it.  
 4 Q. And what's an "affiliated entity" in  
 5 the way that you've used that term?  
 6 A. I generally refer to HCMFA, Nexpoint  
 7 Advisors and the wholly owned subsidiaries of  
 8 Nexpoint Advisors as the affiliated entities.  
 9 HCMFA also owns Nexpoint Securities,  
 10 which is the broker dealer, and so I do work  
 11 with those folks from time to time as well.  
 12 Q. Is there a source of affiliation  
 13 between Nexpoint and HCMFA?  
 14 A. Yes, Mr. Dondero.  
 15 Q. And he controls them both to the  
 16 best of your knowledge. Is that right?  
 17 A. I -- I guess it depends on how you  
 18 define "control."  
 19 But yes, he is a controlling person  
 20 of Nexpoint Advisors, and yes, for all intents  
 21 and purposes, he's the controlling person of  
 22 HCMFA.  
 23 Q. Okay. And can we refer to HCMFA and  
 24 Nexpoint Advisors, LP together as "the  
 25 advisors"?

Page 14

1 D. Sauter  
 2 A. That's fine.  
 3 Q. The advisors are each advisory  
 4 firms. Is that right?  
 5 A. Correct.  
 6 Q. And each of them provide advisory  
 7 services to certain funds. Is that correct?  
 8 A. Correct.  
 9 Q. Okay. Do you hold any titles with  
 10 any of the funds that are advised by either of  
 11 the advisors?  
 12 A. Yes, I am general counsel for  
 13 Nexpoint Residential Trust and I'm general  
 14 counsel of Nexpoint Real Estate Finance.  
 15 Q. Any others?  
 16 A. No, sir.  
 17 Q. Okay. Do you have –  
 18 A. Wait. Wait. Let me clarify.  
 19 I think I am general counsel of  
 20 Nexpoint Real Estate Advisors, and I may be  
 21 general counsel of each of them. I think there  
 22 are nine in total.  
 23 Q. Okay. And are each of them separate  
 24 funds?  
 25 A. Each of the advisors are – manage a

Page 16

1 D. Sauter  
 2 Do you know if Mr. Dondero serves as  
 3 the portfolio manager for any of the funds to  
 4 which the advisors provide advisory services?  
 5 A. He does.  
 6 I don't know which ones.  
 7 Q. We're going to talk in a little  
 8 while about a TerreStar NAV issue.  
 9 MR. MORRIS: And Stacey, that's all  
 10 caps N-A-V, and it's T-E-R-R-A-S-T-A-R [sic].  
 11 Q. We're going to talk a little bit  
 12 about a TerreStar NAV issue.  
 13 Are you generally familiar with  
 14 that?  
 15 A. Generally.  
 16 Q. Okay. And is it your understanding  
 17 that that NAV issue, that TerreStar NAV issue,  
 18 related to certain equity positions that were  
 19 held by certain funds managed by HCMFA?  
 20 A. Yes, I think it was – Global  
 21 Allocation Fund is the one that was  
 22 particularly the insured.  
 23 Q. And can we refer to that as GAF?  
 24 A. Yes, sir.  
 25 Q. Do you know who the portfolio

Page 15

1 D. Sauter  
 2 discrete business line. They're separate  
 3 entities, but not necessarily funds.  
 4 Q. And are each of them owned  
 5 indirectly or directly by Nexpoint Advisors,  
 6 LP?  
 7 A. Yes, sir.  
 8 Q. Okay.  
 9 When did you first meet Mr. Dondero?  
 10 A. I don't recall.  
 11 I think I met him once at an event  
 12 that I was invited to years ago, maybe 2017.  
 13 Q. Do you know if he holds a title at  
 14 HCMFA?  
 15 A. I don't believe he does.  
 16 Q. How about Nexpoint? Does he hold a  
 17 title at Nexpoint?  
 18 A. Yes, he's the president.  
 19 Q. And even though he doesn't hold a  
 20 title at HCMFA, it's your understanding that he  
 21 controls HCMFA. Is that right?  
 22 A. I don't know that I would say that.  
 23 And again, I would need to look at  
 24 the organizational documents.  
 25 Q. Well, as – withdrawn.

Page 17

1 D. Sauter  
 2 manager of GAF was in 2019?  
 3 A. I do not.  
 4 Q. Do you know if it was Mr. Dondero?  
 5 A. I do not.  
 6 Q. In the course of your investigation,  
 7 did you ever ask who the portfolio manager of  
 8 GAF was?  
 9 A. I did not.  
 10 Q. Do you know Frank Waterhouse?  
 11 A. I do.  
 12 Q. When did you first meet  
 13 Mr. Waterhouse?  
 14 A. I think I met him just before I came  
 15 on. It would have been maybe December of 2019.  
 16 Q. Okay. Do you know if Mr. Waterhouse  
 17 holds any titles with either of the advisors?  
 18 A. I believe so, but I'm not exactly  
 19 sure.  
 20 MR. RUKAVINA: I'm going to object  
 21 to vague or form there.  
 22 What time are you specifying,  
 23 Mr. Morris?  
 24 MR. MORRIS: I appreciate that. Let  
 25 me restate the question.

Page 18

1 D. Sauter  
 2 BY MR. MORRIS:  
 3 Q. Mr. Sauter, do you know if  
 4 Mr. Waterhouse held any position with either of  
 5 the advisors at any time in 2019?  
 6 A. I believe he did, but I – I would  
 7 say it was probably treasurer and CFO, but I'm  
 8 speculating.  
 9 Q. In the course of your investigation,  
 10 did you try to determine what title  
 11 Mr. Waterhouse held with HCMFA?  
 12 A. I have not.  
 13 Q. Have you ever tried to determine  
 14 what title Mr. Waterhouse held at HCMFA at any  
 15 time?  
 16 A. At one point I knew what it is. I  
 17 just can't recall.  
 18 Q. Okay. Does – do you know if  
 19 Mr. Waterhouse holds a position with HCMFA  
 20 today?  
 21 A. I believe he does.  
 22 Q. Do you have any understanding as to  
 23 what that position is?  
 24 A. Again, I think it's CFO and/or  
 25 treasurer. That's consistent, I think.

Page 20

1 D. Sauter  
 2 Mr. Waterhouse ran.  
 3 Q. Right.  
 4 I'm asking you specifically about  
 5 whether he held positions at any of the funds.  
 6 Did you understand that when I asked  
 7 my question?  
 8 A. I don't know whether he held any  
 9 position with the funds.  
 10 Q. Okay. And during your  
 11 investigation, did you make any effort to try  
 12 to determine whether he held any positions with  
 13 GAF?  
 14 Let's be very specific.  
 15 A. I don't recall.  
 16 Q. Do you know a gentleman named Will  
 17 Mabry?  
 18 A. I do.  
 19 Q. And do you know if Mr. Mabry was  
 20 ever employed by either of the advisors?  
 21 A. I don't know who employed Mr. Mabry.  
 22 Q. Do you know if he was ever employed  
 23 by Highland Capital Management, LP?  
 24 A. I would suspect that he was employed  
 25 by Highland Capital Management, LP.

Page 19

1 D. Sauter  
 2 Q. Do you have any understanding as to  
 3 when Mr. Waterhouse became the treasurer and/or  
 4 the CFO of HCMFA?  
 5 A. I do not.  
 6 Q. Do you know if Mr. Waterhouse holds  
 7 any positions with any of the funds that are  
 8 advised by either of the advisors?  
 9 A. I believe he – I'm speculating. I  
 10 don't know for certain.  
 11 Q. During the course of your – you  
 12 conducted an investigation around the TerreStar  
 13 NAV issue. Right?  
 14 A. Correct.  
 15 Q. Okay. During the course of your  
 16 investigation, did you ever try to determine  
 17 whether Mr. Waterhouse served in any capacity  
 18 with any of the funds that are managed by  
 19 HCMFA?  
 20 A. Whether he – yes.  
 21 Q. And what did you – what information  
 22 did you learn in the course of your  
 23 investigation on that issue?  
 24 A. My understanding is that the  
 25 valuation team was a subset of the group that

Page 21

1 D. Sauter  
 2 Q. Okay. And what's the basis for that  
 3 speculation?  
 4 A. Because he's at Skyview, and I think  
 5 all of the employees that were at Nexpoint  
 6 Advisors or HCMFA remained where they were.  
 7 Q. Do you know what position he held at  
 8 Highland in 2019, if any?  
 9 A. I don't know.  
 10 Q. Do you know anything about  
 11 Mr. Mabry's skills or expertise, if any?  
 12 A. Other than I believe he was the  
 13 assistant treasurer at GAF and he was on the  
 14 valuation team as well.  
 15 Q. So your understanding is he was the  
 16 assistant treasurer of the fund that we have  
 17 defined as GAF.  
 18 Do I have that right?  
 19 A. That's my understanding.  
 20 Q. Okay. And what's the basis for that  
 21 understanding?  
 22 A. That's just what I recall.  
 23 Q. Okay. To the best of your  
 24 knowledge, does he have an accounting  
 25 background?

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1 D. Sauter  
 2 A. I don't know.  
 3 Q. And is it your understanding that he  
 4 was part of a valuation team?  
 5 I think you used that term.  
 6 A. Yes, I believe he was.  
 7 Q. Okay. And what's the basis for that  
 8 understanding on your part?  
 9 A. Discussions that I've had with Frank  
 10 and his knowledge of the TerreStar NAV error.  
 11 Q. Did Mr. Mabry tell you that he was  
 12 part of the valuation team?  
 13 A. I don't recall.  
 14 Q. Did you ask him?  
 15 A. I don't recall.  
 16 Q. Do you know if Mr. Mabry played any  
 17 role in any aspect of the TerreStar  
 18 investigation that was conducted by the SEC?  
 19 A. I don't know.  
 20 Q. Did you ask Mr. Mabry if he played  
 21 any role in connection with the SEC  
 22 investigation?  
 23 A. I did not.  
 24 Q. Do you know if Mr. Mabry played any  
 25 role in formulating HCMFA's response to the

Page 24

1 D. Sauter  
 2 A. Okay.  
 3 (Exhibit 181, Declaration of Dennis  
 4 C. Sauter, Jr., previously marked for  
 5 identification.)  
 6 Q. Okay. Do you see the first page of  
 7 this document states that it's your  
 8 declaration?  
 9 A. I do.  
 10 Q. And if we can go to the signature  
 11 line, please.  
 12 And that's your signature there,  
 13 sir?  
 14 A. It is.  
 15 Q. And did you sign this on or about  
 16 May 21st, 2021?  
 17 A. Yes, sir.  
 18 Q. Do you remember the purpose of this  
 19 declaration?  
 20 A. It was requesting to file an amended  
 21 answer.  
 22 Q. Okay. Is it fair to say that your  
 23 declaration sets forth the factual basis for  
 24 the proposed amendment?  
 25 A. Yes.

Page 23

1 D. Sauter  
 2 SEC?  
 3 A. I do not.  
 4 Q. Did you ask him?  
 5 A. I don't recall.  
 6 Q. Do you know when he left Highland?  
 7 A. I think he was terminated with the  
 8 other employees.  
 9 Q. You submitted a declaration in  
 10 connection with the adversary proceeding that  
 11 Highland commenced against the HCMFA.  
 12 Do I have that right?  
 13 A. Yes, sir.  
 14 Q. All right. Let's take a look at  
 15 that, if we can put that up on the screen.  
 16 So from time to time, my assistant  
 17 Ms. Canty is going to put some documents up on  
 18 the screen, Mr. Sauter. And it's very  
 19 important that you understand that I will give  
 20 you every opportunity that you believe you need  
 21 in order to read the document.  
 22 So you know, if there's something  
 23 that I put up there that you want to see more  
 24 of, just let me know and we'll just scroll  
 25 around. Okay?

Page 25

1 D. Sauter  
 2 Q. And is it fair to say that your  
 3 declaration describes the investigation that  
 4 you did initially after the complaint was filed  
 5 and then basically a second phase of the  
 6 investigation after Mr. Waterhouse and  
 7 Mr. Mabry migrated from Highland?  
 8 A. Yes.  
 9 Q. Okay. So the purpose of your  
 10 investigation was to understand the origin of  
 11 two promissory notes. Right?  
 12 A. Yes, sir.  
 13 Q. Okay. I just want to go through to  
 14 the notes to make sure that the record is clear  
 15 that we're talking about the same thing.  
 16 There are certain documents that  
 17 we've used in other depositions so they've been  
 18 premarked, and I'd ask Ms. Canty to put up the  
 19 document that's already been marked as  
 20 Exhibit 54.  
 21 MS. CANTY: Okay. John, do you want  
 22 to let the court reporter know this current one  
 23 is 181, premarked 181, this declaration.  
 24 MR. MORRIS: Okay. Fine.  
 25 (Exhibit 54, E-mail chain with

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1 D. Sauter  
 2 attachment dated 5/2/19, D-CNL003777-779,  
 3 previously marked for identification.)  
 4 Q. So if could just scroll down a  
 5 little bit.  
 6 Do you see there's – do you see  
 7 it's – there's an e-mail from David Klos dated  
 8 May 2nd?  
 9 A. Yes.  
 10 Q. Do you know who Mr. Klos is?  
 11 A. I do.  
 12 Q. And who do you understand Mr. Klos  
 13 to be? What role did he play in May of 2019?  
 14 A. I don't know.  
 15 I know he worked under Frank.  
 16 Q. He worked out of – do you see  
 17 there's an e-mail to a corporate accounting  
 18 group?  
 19 A. Yes.  
 20 Q. Have you ever sent or received an  
 21 e-mail from a Highland corporate accounting  
 22 e-mail chain called the corporate accounting  
 23 group?  
 24 A. I've never sent an e-mail from the  
 25 corporate accounting group.

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1 D. Sauter  
 2 And do you see that this is a  
 3 promissory note for \$2.4 million dated May 2,  
 4 2019?  
 5 A. I do.  
 6 Q. Okay. And can we go to the  
 7 signature line.  
 8 Do you see Mr. Waterhouse's  
 9 signature?  
 10 Do you see Mr. Waterhouse's  
 11 signature, sir?  
 12 A. I can't verify whether that's his  
 13 signature, but I'll take your word for it.  
 14 Q. Okay. Can you go to the top of the  
 15 note, please.  
 16 Do you see that the maker is defined  
 17 to be Highland Capital Management Fund  
 18 Advisors, LP?  
 19 A. I do see that that's what it says on  
 20 the first page.  
 21 Q. Okay. And this is one of the two  
 22 notes that was the source of your  
 23 investigation. Right? This was one of the two  
 24 notes that you were investigating the origins  
 25 of?

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1 D. Sauter  
 2 I can't recall receiving one from  
 3 them either.  
 4 Q. Do you see that in this e-mail  
 5 Mr. Klos asks to have \$2.4 million transferred  
 6 from HCMLP to HCMFA?  
 7 A. I do.  
 8 Q. And do you see that he states:  
 9 "This is a new interco loan"?  
 10 A. I do.  
 11 Q. And if we can see the response  
 12 above, do you see how Ms. – do you know  
 13 Kristin Hendrix?  
 14 A. I do.  
 15 Q. And who is Ms. Hendrix, to the best  
 16 of your knowledge.  
 17 A. I believe she worked under Mr. Klos.  
 18 Q. And do you see that she wrote to  
 19 someone named Blair and attached a copy of a  
 20 note?  
 21 A. Yes.  
 22 Q. Okay.  
 23 A. That's what it says.  
 24 Q. And can we go to the next page,  
 25 please.

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1 D. Sauter  
 2 A. Yes.  
 3 Q. Okay. Let's look at the next note,  
 4 please.  
 5 (Exhibit 57, Promissory Note dated  
 6 5/3/19, D-CNL003764-65, previously marked for  
 7 identification.)  
 8 Do you see this is a note for  
 9 \$5 million and it's dated the next day,  
 10 May 3rd, 2019?  
 11 A. I see that.  
 12 Q. Do you see that it's – it also  
 13 defines as the maker Highland Capital  
 14 Management Fund Advisors, LP?  
 15 A. That's what it says on the first  
 16 page, yes.  
 17 Q. Okay. And if we can go to the  
 18 signature line.  
 19 Again, does that appear to be  
 20 Mr. Waterhouse's signature?  
 21 A. Again, I can't verify whether that's  
 22 Mr. Waterhouse's signature or not.  
 23 But it does say that the maker is  
 24 Frank Waterhouse, not Highland Capital  
 25 Management Fund Advisors.

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1 D. Sauter  
 2 Q. I understand.  
 3 But the definition of "maker" is  
 4 above. Correct?  
 5 A. I wouldn't – that's not how I would  
 6 draft a promissory note.  
 7 Q. I didn't ask you how you would draft  
 8 it.  
 9 I'm just asking you whether, having  
 10 just looked at the document and as a lawyer  
 11 admitted to practice in law, would you agree  
 12 that the term "maker" is a defined term in this  
 13 document?  
 14 MR. RUKAVINA: I'll just object to  
 15 form here and also that this witness has not  
 16 been called as an expert, even though he's a  
 17 lawyer.  
 18 So I'll just preserve that for the  
 19 record.  
 20 MR. MORRIS: Fair. That's fine.  
 21 THE WITNESS: I would agree that  
 22 "maker" is defined on the first page, but that  
 23 would be an improper signature block, if it was  
 24 intended to be Highland Capital Management Fund  
 25 Advisors.

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1 D. Sauter  
 2 investigation, you spoke with Jim Dondero.  
 3 Correct?  
 4 A. I did.  
 5 Q. Okay. And according to  
 6 Paragraph 13, he couldn't recall the genesis of  
 7 the notes. Is that right?  
 8 A. That's correct.  
 9 Q. Did you show him the notes?  
 10 A. I don't recall.  
 11 Q. Did you tell him that the notes were  
 12 dated May 2nd and May 3rd, 2019?  
 13 A. I don't recall that either.  
 14 Q. Did you do anything to try to  
 15 refresh his recollection about the timing of  
 16 the notes?  
 17 A. I'm sure I did.  
 18 But I don't recall that conversation  
 19 in any detail as I'm sitting here today.  
 20 Q. Did you tell him the principal  
 21 amount of the notes?  
 22 A. Yes.  
 23 Q. And even though you told him the  
 24 principal amount of the notes, he still had no  
 25 recollection as to what they related to. Is

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1 D. Sauter  
 2 BY MR. MORRIS:  
 3 Q. All right. We're going to refer to  
 4 these two notes collectively as "the notes."  
 5 Is that okay?  
 6 A. That's fine.  
 7 Q. And these are the two notes that you  
 8 were investigating. Right?  
 9 A. Yes.  
 10 Q. And it's your understanding that  
 11 these are the two notes that Highland Capital  
 12 Management is suing to collect on. Right?  
 13 A. Yes.  
 14 Q. Okay. According to your  
 15 declaration, if we can go to Paragraph 13, if  
 16 we can put that back up on the screen, as part  
 17 of the initial investigation – withdrawn.  
 18 I'm going to use the phrase "initial  
 19 investigation" to mean the investigation that  
 20 you conducted between the time the complaint  
 21 was filed and the time that HCMFA filed its  
 22 original answer on March 1st.  
 23 Is that okay?  
 24 A. Sure.  
 25 Q. And during that initial

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1 D. Sauter  
 2 that right?  
 3 A. He couldn't recall the genesis,  
 4 correct.  
 5 Q. Did he have any recollection at all  
 6 as to what the notes related to?  
 7 A. I don't – I don't believe so,  
 8 because if he had, then I would have been able  
 9 to pin it down further.  
 10 Q. How many conversations did you have  
 11 with Mr. Dondero as part of your initial  
 12 investigation?  
 13 A. I don't recall.  
 14 Two, three.  
 15 Q. Was there anybody present other than  
 16 the two of you?  
 17 A. Again, I don't recall.  
 18 Q. Do you recall if they took place on  
 19 the phone or were they in person?  
 20 A. It would have been in person.  
 21 Q. And why do you say it would have  
 22 been in person?  
 23 A. Well, now that you say that, no, it  
 24 probably wasn't in person because he would not  
 25 have been in the office at that time.

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1 D. Sauter  
 2 There was obviously a lot of things  
 3 going on at this point. Mr. Dondero had been  
 4 evicted from the building, and so that made –  
 5 I shouldn't say evicted. He'd been kicked out  
 6 by the debtor, and so that made our  
 7 communications a little more difficult.  
 8 So I would have spoken with him on  
 9 the phone because I did not go over to the  
 10 NexBank office very often.  
 11 Q. Paragraph 13 says that you also  
 12 spoke with "the few employees of HCMFA."  
 13 Do you see that in the middle of the  
 14 paragraph?  
 15 A. Yes.  
 16 Q. Can you identify the other CMFA  
 17 employees that you spoke with as part of your  
 18 initial investigation?  
 19 A. I would have spoken with Dustin  
 20 Norris and –  
 21 Q. Do you recall speaking – I  
 22 apologize for interrupting.  
 23 Go ahead.  
 24 A. And so he wasn't an HCMFA employee,  
 25 but Jason Post.

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1 D. Sauter  
 2 president of HCMFA?  
 3 A. I do not.  
 4 Q. Do you know if he was vice president  
 5 of HCMFA in October 2020?  
 6 A. I do not.  
 7 Q. Do you know if Mr. Norris holds any  
 8 positions with DAF – I'm sorry.  
 9 Do you know if Mr. Norris holds any  
 10 positions with GAF?  
 11 A. I don't know.  
 12 Q. How about Mr. Post? Do you know if  
 13 Mr. Post held any positions with HCMFA in 2019?  
 14 A. I don't.  
 15 Q. Do you know if he holds any  
 16 positions with HCMFA today?  
 17 A. He does not.  
 18 Q. Is Mr. Post a compliance officer, to  
 19 the best of your knowledge?  
 20 A. He was.  
 21 He left a week ago to take another  
 22 job.  
 23 Q. So he was – and who did he – for  
 24 whom did he serve as the chief compliance  
 25 officer until a week ago?

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1 D. Sauter  
 2 Q. Do you have a recollection of  
 3 speaking to Mr. Norris, or are you just  
 4 surmising that you probably did?  
 5 A. I'm surmising that I probably would  
 6 have.  
 7 There was a lot, again, that was  
 8 happening. I didn't have the historical  
 9 knowledge of these things, and so I talked with  
 10 Mr. Post and Mr. Norris daily about everything  
 11 that was going on just to get some background  
 12 on all of the moving parts.  
 13 Q. Okay. Do you know if Mr. Norris  
 14 held any position with HCMFA in 2019?  
 15 A. I don't – I don't know for certain.  
 16 I believe he did.  
 17 I can't recall what his position  
 18 would have been.  
 19 Q. Does he have a position with HCMFA  
 20 today, to the best of your knowledge?  
 21 A. I believe he does.  
 22 Q. And what do you understand his  
 23 position to be?  
 24 A. I would say vice president.  
 25 Q. Do you know when he became vice

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1 D. Sauter  
 2 A. He was chief compliance officer for  
 3 Nexpoint Advisors.  
 4 He may have been the chief  
 5 compliance officer for HCMFA as well.  
 6 Q. Okay.  
 7 A. And if I had to guess, he would have  
 8 had those same positions back in 2019 –  
 9 Q. Okay.  
 10 A. – because Thomas Surgent was the  
 11 chief compliance officer for HCMLP and Jason  
 12 worked under him.  
 13 And I think that started sometime in  
 14 2014, maybe earlier.  
 15 Q. And did Mr. Norris and Mr. Post tell  
 16 you during your initial investigation that they  
 17 had no knowledge of the notes?  
 18 A. Yeah, generally I don't think that  
 19 they were aware of the notes, or I should say  
 20 they weren't aware of the genesis of the notes.  
 21 Q. Were they aware of the existence of  
 22 the notes?  
 23 A. They were.  
 24 Q. Did they tell you when they had  
 25 learned of the existence of the notes?

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1 D. Sauter  
 2 A. I think it's something that I raised  
 3 to them because I didn't know where the notes  
 4 had come from.  
 5 Q. Right.  
 6 And they told you that they were  
 7 aware of the notes but they didn't know the  
 8 genesis of them?  
 9 A. I don't recall whether they were  
 10 aware of the notes before I asked about them.  
 11 Q. Did you ask them if they were aware  
 12 of the notes prior to the time you showed it to  
 13 them?  
 14 A. I would have asked them what the  
 15 notes were about.  
 16 Q. I don't want to know what you would  
 17 have done.  
 18 I know this is hard, Mr. Sauter.  
 19 I'm really just asking you to search your  
 20 memory.  
 21 Do you recall asking them whether  
 22 they were aware of the existence of the notes  
 23 prior to your conversation with them?  
 24 A. I don't recall if I asked whether  
 25 they were aware of the existence of the notes

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1 D. Sauter  
 2 He didn't make any comments that  
 3 made me think one way or the other.  
 4 Q. And you didn't ask.  
 5 Is that fair?  
 6 A. Correct, I did not ask.  
 7 Q. So you had no information as to  
 8 whether or not Mr. Dondero actually knew of the  
 9 existence of the notes prior to the  
 10 commencement of the lawsuit.  
 11 Is that fair?  
 12 A. Correct.  
 13 Q. Okay. Paragraph 13 also states that  
 14 you reviewed limited books and records of  
 15 HCMFA.  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. Okay. What books and records did  
 19 you review as part of your initial  
 20 investigation?  
 21 A. I don't recall exactly what I looked  
 22 at or for.  
 23 I literally had to just go onto the  
 24 system and try to find anything that related to  
 25 the notes so I could try to find out what they

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1 D. Sauter  
 2 prior to my conversation with them.  
 3 Q. Now, Paragraph 13 says that  
 4 Mr. Dondero could not recall the genesis of the  
 5 notes.  
 6 Do you see that?  
 7 A. Yes.  
 8 Q. Did Mr. Dondero indicate to you that  
 9 he was aware of the existence of the notes even  
 10 though he couldn't recall the genesis of the  
 11 notes?  
 12 A. That's not how I would characterize  
 13 it, but..  
 14 Q. How would you characterize it?  
 15 A. He suggested that I talk to  
 16 Mr. Waterhouse.  
 17 Q. Did you ask Mr. Dondero when he  
 18 first learned of the existence of the notes?  
 19 A. No.  
 20 Q. Did he say to you anything that  
 21 caused you to believe that he was unaware of  
 22 the existence of the notes prior to the  
 23 commencement of the lawsuit?  
 24 A. No.  
 25 I guess let me clarify.

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1 D. Sauter  
 2 were.  
 3 Q. Did you make any effort to try to  
 4 determine whether HCMFA had accounted for the  
 5 notes in its books and records?  
 6 A. I did not.  
 7 Q. Do you know today whether HCMFA ever  
 8 accounted for the notes in its books and  
 9 records?  
 10 A. I don't know.  
 11 Q. Have you ever reviewed HCMFA's  
 12 balance sheets?  
 13 A. I think I have, but I don't – I  
 14 can't recall exactly when.  
 15 Q. Did you ever make any effort to  
 16 determine whether HCMFA carried these notes on  
 17 its balance sheet as liabilities?  
 18 A. I did not.  
 19 Q. Do you know if HCMFA ever requested  
 20 an extension of time to respond to the  
 21 complaint?  
 22 A. I don't know, but I would assume so.  
 23 Q. Okay. Do you have any knowledge of  
 24 HCMFA having done so?  
 25 A. No.



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1 D. Sauter  
 2 Q. Okay. Do you know if – prior to  
 3 the time it filed its original answer, whether  
 4 HCMFA ever asked HCMLP to provide any documents  
 5 in connection with the adversary proceeding?  
 6 A. Say that again.  
 7 Q. Sure.  
 8 So HCMFA filed its answer on  
 9 March 1st, according to Paragraph 12.  
 10 Do I have that right?  
 11 A. I believe that's right.  
 12 Q. Okay. Do you know if HCMFA ever  
 13 asked Highland for any documents before it  
 14 filed its answer?  
 15 A. I don't recall.  
 16 Q. So at the time HCMFA filed its  
 17 answer, Mr. Dondero couldn't recall the genesis  
 18 of the notes. Correct?  
 19 A. That's right.  
 20 Q. And neither Mr. Post nor Mr. Norris  
 21 could recall the genesis of the notes.  
 22 Correct?  
 23 A. Correct.  
 24 Q. And HCMFA had limited access to  
 25 books and records. Correct?

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1 D. Sauter  
 2 Skyview so that you had access to them. Is  
 3 that right?  
 4 A. Correct.  
 5 Q. And that's when you conducted the  
 6 second phase of your investigation. Correct?  
 7 A. Yes.  
 8 Q. And you'll see at the end of Page 4  
 9 you reference that the debtor had provided  
 10 access to HCMFA of much of its books and  
 11 records.  
 12 Do I have that right?  
 13 A. Yes.  
 14 Q. Okay. And what books and records  
 15 did Highland provide between March 1st and  
 16 mid-April when you conducted the second phase  
 17 of your investigation?  
 18 Are there any particular books and  
 19 records that you're referring to in that  
 20 sentence?  
 21 A. I can't recall exactly what it was.  
 22 There was a process that we were  
 23 going through that I think – if you'll recall,  
 24 that we went back and forth on obtaining access  
 25 to books and records, submitting written

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1 D. Sauter  
 2 A. Correct.  
 3 Q. And HCMFA had no access to the  
 4 debtor's employees who had provided services to  
 5 HCMFA under shared services agreements.  
 6 Correct?  
 7 A. I think our view was it was  
 8 potentially improper to reach out to those  
 9 employees on a matter that was adverse to  
 10 HCMLP, and so we refrained from doing so.  
 11 Q. Okay. And so under those  
 12 circumstances, HCMFA nevertheless filed an  
 13 answer that asserted no affirmative defenses.  
 14 Correct?  
 15 A. Yes.  
 16 Q. But this situation changed in  
 17 mid-April 2001. Correct?  
 18 A. Yes.  
 19 Q. If we can scroll down to  
 20 Paragraph 19.  
 21 (Discussion was held off the  
 22 record.)  
 23 Q. So in April 2001, the situation  
 24 changed because Mr. Waterhouse and other former  
 25 employees of Highland had migrated over to

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1 D. Sauter  
 2 requests, and those were either granted or  
 3 denied. And so there were a litany of  
 4 documents that were sent over.  
 5 Q. Can you identify any documents that  
 6 you reviewed as part of either the initial  
 7 investigation or the follow-up investigation in  
 8 April 2021?  
 9 A. Yes.  
 10 I would have reviewed documents  
 11 related to the TerreStar NAV error.  
 12 Q. And can you describe what those  
 13 documents are.  
 14 A. Memos.  
 15 Q. Okay. Do you recall how many memos  
 16 you reviewed that concerned the TerreStar NAV  
 17 issue?  
 18 A. I want to say that there were three,  
 19 four or five, something along those lines.  
 20 I think there was a memo that was  
 21 submitted to the board and then maybe some  
 22 communications with the SEC.  
 23 Q. And is it your testimony that HCMFA  
 24 did not have those memos until after March 1st,  
 25 2021?

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1 D. Sauter  
 2 A. I don't know whether we had access  
 3 to those memos, but I didn't – I wasn't able  
 4 to speak to Frank Waterhouse, and so I didn't  
 5 know to look for them.  
 6 Q. And neither Mr. Dondero nor  
 7 Mr. Norris nor Mr. Post thought to inform you  
 8 about the NAV star error [sic] because they had  
 9 no idea what the notes related to. Correct?  
 10 A. That's my recollection. That's  
 11 correct.  
 12 Q. Okay. Other than the three to five  
 13 memos that you've just described, are there any  
 14 other documents that you recall reviewing as  
 15 part of your investigation?  
 16 A. No.  
 17 Q. Do you know to whom the memos that  
 18 you've just described were addressed?  
 19 Who were they sent to?  
 20 A. I believe there was one that was  
 21 sent to the board.  
 22 And then the others, I think, were  
 23 just either internal communications or  
 24 communications with the SEC.  
 25 Q. Can we scroll down to Paragraph 22,

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1 D. Sauter  
 2 were signed by mistake by Waterhouse without  
 3 authority from HCMFA"?  
 4 A. Yes.  
 5 Q. Okay. Let's talk about your  
 6 discussions with Mr. Waterhouse as part of your  
 7 investigation.  
 8 How many times did you speak with  
 9 him?  
 10 A. Probably three.  
 11 Q. And was anybody else present for any  
 12 of the three conversations?  
 13 A. I don't recall. I don't think so.  
 14 Q. Did you take any notes of your  
 15 conversations with Mr. Waterhouse?  
 16 A. I don't recall.  
 17 Q. Do you recall whether you sent  
 18 anybody any e-mails summarizing your  
 19 conversations with Mr. Waterhouse?  
 20 A. I don't recall.  
 21 Q. Did the three conversations take  
 22 place in person, on the phone or some mix  
 23 thereof?  
 24 A. I think it would have been a mix  
 25 thereof.

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1 D. Sauter  
 2 please.  
 3 Actually, look at Paragraph 21  
 4 first.  
 5 According to Paragraph 21, as part  
 6 of the second phase of your investigation, you  
 7 spoke with Mr. Waterhouse and Mr. Mabry.  
 8 Correct?  
 9 A. Yes.  
 10 Q. Did you speak with anybody else as  
 11 part of the second phase of your investigation?  
 12 A. Yes, I would have spoken with Jason  
 13 Post and Dustin Norris.  
 14 Q. And is it fair to say based on the  
 15 second phase of your – withdrawn.  
 16 Is it fair to say that your  
 17 conclusions that resulted from the second phase  
 18 of your investigation are set forth in  
 19 Paragraph 22?  
 20 A. (Reviewing document.)  
 21 I wouldn't say all of my  
 22 conclusions. But yes, that's some of them.  
 23 Q. Okay. Is it fair to say that, based  
 24 on the second phase of your investigation, you  
 25 concluded, among other things, "that the notes

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1 D. Sauter  
 2 Q. Do you recall which of the three  
 3 conversations was the longest, which was the  
 4 shortest?  
 5 I just want to get a sense of how  
 6 much time you spent with Mr. Waterhouse.  
 7 A. I don't, because again, there was  
 8 lots going on.  
 9 The first one was in the conference  
 10 room on the 11th floor at NexBank. The second  
 11 one was in his office. And I think the third  
 12 was on a phone call.  
 13 Q. Did any of them last more than ten  
 14 minutes?  
 15 A. I can't say for certain.  
 16 I would think so, but...  
 17 Q. Okay. Did you show Mr. Waterhouse  
 18 either of the notes as part of either of these  
 19 three interviews?  
 20 A. I don't recall if I did.  
 21 But he knew – he knew the notes.  
 22 Q. And what did he say to you that led  
 23 you to believe that he knew the notes?  
 24 A. Because he was aware of the notes.  
 25 I...

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1 D. Sauter  
 2 Q. Did he tell the circumstances  
 3 surrounding the execution of the notes?  
 4 A. Yes.  
 5 Q. What did he tell you?  
 6 A. He said those notes were executed in  
 7 connection with the TerreStar NAV error.  
 8 Q. During your discussions with  
 9 Mr. Waterhouse, did he ever deny signing the  
 10 notes?  
 11 A. No.  
 12 Q. He never told you that he was  
 13 unaware of the existence of the notes, did he?  
 14 A. No.  
 15 Q. In fact, before signing your  
 16 declaration, you believed Mr. Waterhouse in  
 17 fact had signed the notes. Correct?  
 18 A. Yes.  
 19 Q. And that's why in Paragraph 22 you  
 20 specifically wrote that the notes were signed  
 21 by mistake by Waterhouse. Right?  
 22 A. Yes.  
 23 Q. And you understood at the time you  
 24 signed your declaration that Mr. Waterhouse had  
 25 signed the notes at a time when he was HCMFA's

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1 D. Sauter  
 2 notes by mistake?  
 3 A. I guess I'd like to clarify that  
 4 response, if I may.  
 5 Q. Go right ahead.  
 6 A. I asked Mr. Waterhouse why he would  
 7 have signed it – the notes in his personal  
 8 capacity.  
 9 And his response was, I don't know,  
 10 I didn't prepare them.  
 11 So I don't know if that gives you  
 12 the answer you're looking for, but there was  
 13 some confusion about the execution of those  
 14 notes.  
 15 Q. Okay. Did he say anything else  
 16 that – on the topic of whether signing the  
 17 notes was a mistake?  
 18 A. No.  
 19 Q. Okay. Your declaration doesn't  
 20 disclose what you just described for me.  
 21 Correct?  
 22 A. Not in those exact words, no.  
 23 Q. Is there anything in your  
 24 declaration that suggests that Mr. Waterhouse  
 25 hadn't signed the notes?

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1 D. Sauter  
 2 chief financial officer. Correct?  
 3 A. I don't think I said that, but that  
 4 would have been my assumption.  
 5 Q. Okay. I think if we can – give me  
 6 just one moment. I think I...  
 7 Can we go to Paragraph 29, please.  
 8 You'll see, according to your  
 9 declaration, it says: "Returning to the notes,  
 10 Waterhouse was the chief financial officer of  
 11 both the debtor and the HCMFA during the above  
 12 events and at the time he signed the notes."  
 13 Have I read that correctly?  
 14 A. You did.  
 15 Q. Does that refresh your recollection  
 16 that at the time you signed this declaration  
 17 you believed that Mr. Waterhouse was HCMFA's  
 18 CFO at the time he signed the notes?  
 19 A. It does.  
 20 Q. Okay. During your investigation did  
 21 Mr. Waterhouse ever tell you that he signed the  
 22 notes by mistake?  
 23 A. No.  
 24 Q. Did you ever ask Mr. Waterhouse  
 25 during your investigation whether he signed the

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1 D. Sauter  
 2 A. I don't think there's anything else  
 3 in my declaration from –  
 4 Q. Okay. There's nothing –  
 5 (Simultaneous crosstalk.)  
 6 Q. I apologize.  
 7 A. – from May that would suggest that  
 8 Mr. Waterhouse didn't sign the notes.  
 9 Q. There's nothing in here, in your  
 10 declaration, that states that Mr. Waterhouse  
 11 admitted that he made a mistake in signing the  
 12 notes. Correct?  
 13 A. Correct.  
 14 Q. There's nothing in your declaration  
 15 that suggests that Mr. Waterhouse in fact did  
 16 not sign or did not authorize the signing of  
 17 his signature to these notes. Correct?  
 18 A. Correct, because he told me he did.  
 19 Q. Okay. And Mr. – he told you that  
 20 he had signed the notes. Correct?  
 21 A. Yes.  
 22 He said that he didn't use his  
 23 electronic signature then, and if his signature  
 24 was on them, it would have been his.  
 25 Q. Okay. Mr. Waterhouse never filed

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1 D. Sauter  
 2 his own declaration in support of HCMFA's  
 3 motion for leave to amend their answer.  
 4 Correct?  
 5 A. Correct.  
 6 Q. During your investigation did you  
 7 ask Mr. Waterhouse if he had authority to sign  
 8 the notes?  
 9 A. Probably not in those exact words.  
 10 Q. Okay. Did you ask him in form or  
 11 substance whether he was authorized to sign the  
 12 notes?  
 13 A. Yes.  
 14 Q. And what did he say?  
 15 A. I think he – well, his response was  
 16 if he signed them, he was authorized to sign  
 17 them.  
 18 Q. Okay. And Mr. Waterhouse never told  
 19 you that he signed the notes without authority.  
 20 Correct?  
 21 A. He told me that – I asked him if  
 22 Mr. Dondero had approved the notes.  
 23 And I don't think he could recall.  
 24 Q. Okay. Did Mr. Waterhouse ever tell  
 25 you that he signed the notes without authority?

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1 D. Sauter  
 2 BY MR. MORRIS:  
 3 Q. All right. Are you aware that he  
 4 testified that nobody has ever told him that he  
 5 made a mistake in signing the notes?  
 6 MR. RUKAVINA: Objection, form.  
 7 THE WITNESS: I'm not.  
 8 Q. Are you aware of anybody in the  
 9 world ever telling Mr. Waterhouse that he made  
 10 a mistake in signing the notes?  
 11 A. Yes.  
 12 Q. And who told him that?  
 13 A. Me.  
 14 Q. And when did you tell him that?  
 15 A. When we had this discussion.  
 16 Q. Okay. So it's your testimony that  
 17 you actually told Mr. Waterhouse that he made a  
 18 mistake in signing the notes. Right?  
 19 A. I asked him who had approved these  
 20 notes and what was the process.  
 21 And he said he couldn't give me any  
 22 process. He said the money was transferred,  
 23 and so we signed the notes.  
 24 Q. Okay. But did you tell him that he  
 25 made a mistake?

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1 D. Sauter  
 2 A. No.  
 3 Q. Okay. Your declaration certainly  
 4 doesn't say that Mr. Waterhouse admitted  
 5 signing the notes without authority. Correct?  
 6 A. Correct.  
 7 Q. Mr. Waterhouse never filed a  
 8 declaration in this case stating that he had  
 9 filed the notes without authority. Correct?  
 10 A. Correct.  
 11 Q. Are you aware that Mr. Waterhouse  
 12 was deposed in this case?  
 13 A. I'm – yes, I'm aware.  
 14 Q. Have you reviewed his deposition  
 15 transcript?  
 16 A. I have not.  
 17 Q. Has his testimony been described for  
 18 you by anybody?  
 19 MR. RUKAVINA: And I'll just caution  
 20 you, Mr. Sauter. You know, I think that's a  
 21 yes or no answer, but don't go into the  
 22 substance of any discussions with me.  
 23 THE WITNESS: Yes. Okay.  
 24 Yes.  
 25

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1 D. Sauter  
 2 A. I think I implied it.  
 3 Q. Do you have a recollection of  
 4 actually telling him that he made a mistake?  
 5 A. That would be my recollection.  
 6 Obviously he disagrees with it.  
 7 Q. Do you know if any – and on what  
 8 basis did you conclude that he made a mistake?  
 9 Withdrawn.  
 10 You have no personal knowledge of  
 11 anything that happened in connection with the  
 12 TerreStar valuation issue. Correct?  
 13 A. I was not personally involved in the  
 14 TerreStar valuation issue, correct.  
 15 Q. You weren't involved in any of the  
 16 decisions that were made in connection with the  
 17 TerreStar valuation. Correct?  
 18 A. Correct.  
 19 Q. You weren't made – you weren't  
 20 involved and had no responsibility for HCMFA's  
 21 response to the SEC. Correct?  
 22 A. Correct.  
 23 Q. You had no responsibility or  
 24 involvement in the decision as to how HCMFA was  
 25 going to fund the losses to the GAF. Correct?

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1 D. Sauter  
 2 A. Correct.  
 3 Q. You had no responsibility or  
 4 involvement in how HCMFA reported to GAF.  
 5 Correct?  
 6 A. Correct.  
 7 Q. But nevertheless, despite having no  
 8 personal knowledge of those issues, you told  
 9 Mr. Waterhouse or implied to Mr. Waterhouse  
 10 that he made a mistake in executing the notes.  
 11 Correct?  
 12 A. Correct.  
 13 Q. What did Mr. Waterhouse say in  
 14 response?  
 15 A. Not much. He just disagreed.  
 16 Q. Did he just say, I disagree, and  
 17 that's it or did he actually – do you recall  
 18 anything specific that he said?  
 19 A. I think I've already testified he  
 20 said, we transferred the money, so I executed  
 21 the notes. HCMFA didn't have the money to pay  
 22 GAF, and so we transferred it from HCMLP and I  
 23 executed the notes.  
 24 Q. Okay. Your declaration doesn't  
 25 attribute any specific statements to

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1 D. Sauter  
 2 A. Did I have any discussions with him  
 3 about this?  
 4 Q. I apologize. That was a bad  
 5 question.  
 6 Did you discuss in May of 2021 the  
 7 issues concerning the notes with Mr. Dondero,  
 8 or was that just part of the initial  
 9 investigation?  
 10 A. I don't recall.  
 11 Q. And then a couple of lines down, you  
 12 say – you wrote: "It appears that  
 13 Mr. Waterhouse assumed incorrectly that the  
 14 funds being paid by the debtor were a loan to  
 15 HCMFA."  
 16 Do you see that?  
 17 A. Yes.  
 18 Q. Did you ask Mr. Waterhouse if he  
 19 actually made the assumption that you're  
 20 attributing to him?  
 21 A. Yes.  
 22 Q. And did he ever admit that the  
 23 assumption was incorrect?  
 24 A. He did not admit that the assumption  
 25 was incorrect.

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1 D. Sauter  
 2 Mr. Waterhouse, does it?  
 3 A. It does not.  
 4 Q. In fact, your declaration is just –  
 5 withdrawn.  
 6 If we can go to Paragraph 30.  
 7 Take a look at Paragraph 30. We'll  
 8 kind of parse it through.  
 9 The first sentence says: "It  
 10 appears clear that Mr. Waterhouse made a  
 11 mistake."  
 12 Do you see that?  
 13 A. Yes.  
 14 Q. But again, Mr. Waterhouse never  
 15 admitted to making a mistake. Correct?  
 16 A. Correct.  
 17 Q. And this is your – this is a  
 18 conclusion that you're reaching in May of 2021,  
 19 more than two years after the fact. Correct?  
 20 A. Based upon my review of the  
 21 documents and my discussions with Mr. Post and  
 22 Mr. Norris.  
 23 Q. Did you ever have any discussions  
 24 with Mr. Dondero in May of 2021 as you were  
 25 preparing this document?

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1 D. Sauter  
 2 Q. Okay. Again, that's your own  
 3 conclusion. Is that fair?  
 4 A. That's correct.  
 5 Q. And then you continue on and you  
 6 write: "Third" – withdrawn.  
 7 You write: "Third, it therefore  
 8 appears that Mr. Waterhouse prepared the notes  
 9 for some internal accounting or other purpose  
 10 but without there being actual consideration  
 11 for the notes and without any intention on the  
 12 part of the debtor and HCMFA that there be  
 13 notes or that there be a loan transaction."  
 14 Have I read that correctly?  
 15 A. Yes.  
 16 Q. So did Mr. Waterhouse tell you that  
 17 he prepared the notes for some internal  
 18 accounting or other purpose?  
 19 A. Yes.  
 20 Q. And did he tell you what the purpose  
 21 of the notes was?  
 22 A. Yes.  
 23 He said if he transferred money he  
 24 had to have a note to go with it.  
 25 Q. You state in your declaration:

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1 D. Sauter  
 2 "There was no" – withdrawn.  
 3 You state in your declaration that  
 4 there was no "intention on the part of the  
 5 debtor and HCMFA that there be notes or that  
 6 there be a loan transaction."  
 7 Do you see that?  
 8 A. Yes.  
 9 Q. What's the basis for –  
 10 MR. RUKAVINA: Object to the form.  
 11 I apologize. I apologize, John.  
 12 I apologize, DC.  
 13 I'll just object to the form.  
 14 That's not what this says.  
 15 Go ahead.  
 16 MR. MORRIS: Well, then let me  
 17 restate it if I read it incorrectly.  
 18 BY MR. MORRIS:  
 19 Q. Mr. Sauter, does the last sentence  
 20 of your Paragraph 30 state, among other things,  
 21 that the notes were prepared "without any  
 22 intention on the part of the debtor and HCMFA  
 23 that there be notes or that there be a loan  
 24 transaction"?  
 25 A. Yes.

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1 D. Sauter  
 2 accounting performed when they transferred the  
 3 funds to pay GAF.  
 4 Q. Is it your testimony as the general  
 5 counsel of Nexpoint that the law department or  
 6 the legal department is involved in every note  
 7 that's executed by one of the Highland  
 8 affiliates?  
 9 MR. RUKAVINA: Object to the form.  
 10 THE WITNESS: I can't answer that.  
 11 Q. Okay. So other than the fact that  
 12 it didn't go past the legal department, do you  
 13 have any other basis for your statement that it  
 14 appears that the debtor had no intention that  
 15 there would be notes?  
 16 A. Yes, there's an internal NAV error  
 17 correction policy that obligates the  
 18 responsible party to pay for it.  
 19 In this case it was HCMLP that made  
 20 the NAV error.  
 21 Q. There's a policy that you're  
 22 referring to?  
 23 A. Yes.  
 24 Q. And do you know when that policy was  
 25 adopted?

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1 D. Sauter  
 2 Q. What's the basis for your sworn  
 3 statement concerning the debtor's intentions?  
 4 MR. RUKAVINA: Again, I'll object.  
 5 Just so that we're clear, Mr. Sauter  
 6 says "it appears that." He does not say it is  
 7 a fact. He says "it appears that." There is a  
 8 distinction there.  
 9 MR. MORRIS: Okay. You've got your  
 10 objection.  
 11 BY MR. MORRIS:  
 12 Q. What's the basis for your statement  
 13 that it appeared the debtor had no intention  
 14 that there would be notes or that there would  
 15 be a loan transaction?  
 16 A. If you're talking about a  
 17 \$7.4 million obligation, I would assume that  
 18 there would be a process internally on who was  
 19 responsible for the payment of the fees for  
 20 the – or the expenses for the NAV error.  
 21 Based upon my discussions with Frank  
 22 Waterhouse, there was no process or the legal  
 23 department was not involved in making a  
 24 determination as to whether there should be  
 25 notes. It was merely a ministerial act that

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1 D. Sauter  
 2 A. I don't know for certain.  
 3 But I know there was a policy in  
 4 place as of 2018.  
 5 Q. Okay. Other than the policy, have  
 6 you ever seen any memo written – withdrawn.  
 7 Have you ever seen any document in  
 8 the world that states that HCMLP is responsible  
 9 for the TerreStar NAV error?  
 10 A. I would say the memos that  
 11 acknowledged that there was a mistake.  
 12 Q. And is it your recollection that the  
 13 memos specifically say that HCMLP was  
 14 responsible for the mistake?  
 15 A. No, because the memos were vis-~~vis~~  
 16 HCMFA and GAF.  
 17 Q. Okay. So let me ask you the  
 18 question again.  
 19 During the course of your two  
 20 investigations, did you ever see a document  
 21 that stated that HCMLP was responsible for the  
 22 TerreStar NAV error?  
 23 A. I don't recall.  
 24 Q. You don't recall seeing one. Is  
 25 that correct?

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1 D. Sauter  
 2 A. That's correct.  
 3 Q. Okay.  
 4 A. Can we take a quick break?  
 5 Q. Yeah, now would be perfectly fine.  
 6 Give me just one second before we go  
 7 off the record.  
 8 So it's 2:15 local time. Can we  
 9 limit it to ten minutes, Mr. Sauter?  
 10 A. Yeah, that would be fine.  
 11 Q. Okay. And I would ask that you're  
 12 still under oath, and I would ask that you not  
 13 speak with counsel or communicate with anybody  
 14 about the substance of your deposition.  
 15 Is that fair?  
 16 MR. RUKAVINA: Don't answer that  
 17 question, Mr. Sauter.  
 18 The law is what it is, and we're not  
 19 going to agree to something (audio issue) than  
 20 the law requires.  
 21 MR. MORRIS: Well, then I'm not  
 22 going to take a break. How about that?  
 23 Let's keep going.  
 24 MR. RUKAVINA: No, we're taking a  
 25 break and I'm going to the restroom.

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1 D. Sauter  
 2 A. I did not.  
 3 Q. Okay. Did you communicate with  
 4 anybody about the substance of your testimony?  
 5 A. I did not.  
 6 Q. I want to stick with the focus on  
 7 the debtor's intent as stated in Paragraph 30.  
 8 Before you prepared your  
 9 declaration, did you spend any time reviewing  
 10 any of the debtor's bankruptcy filings?  
 11 A. Yes.  
 12 Q. And are you aware that throughout  
 13 the bankruptcy the debtor disclosed these notes  
 14 as assets of the estate?  
 15 A. Yes.  
 16 Q. And what documents did you review  
 17 that led you to conclude that the debtor was  
 18 disclosing the notes as assets of the estate?  
 19 Do you recall?  
 20 A. I mean, I would have known it from  
 21 the schedules. I would have known it from your  
 22 complaint.  
 23 Q. Okay. So you reviewed the debtor's  
 24 schedules of assets and liabilities prior to  
 25 the time you signed your declaration. Is that

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1 D. Sauter  
 2 MR. MORRIS: We're not taking a  
 3 break, bud. I'm not –  
 4 (Simultaneous crosstalk.)  
 5 MR. RUKAVINA: We'll be back in ten  
 6 minutes.  
 7 MR. MORRIS: Hey, Davor, I'm going  
 8 to ask your client a question. Okay?  
 9 (Simultaneous crosstalk.)  
 10 MR. RUKAVINA: -- but we're not --  
 11 I'm sorry.  
 12 You can ask him afterwards who he's  
 13 talked to and about what, but you don't get to  
 14 tell him that he can't talk to anyone.  
 15 So let's go take a piss break and be  
 16 back in nine minutes.  
 17 MR. MORRIS: Put that on the record.  
 18 (Recess was taken from 2:17 p.m. to  
 19 2:28 p.m.)  
 20 BY MR. MORRIS:  
 21 Q. Are you ready to proceed, Mr.  
 22 Sauter?  
 23 A. I am.  
 24 Q. During the break did you speak to  
 25 anybody about the substance of your testimony?

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1 D. Sauter  
 2 right?  
 3 A. Well, I didn't review them in  
 4 connection with my preparation of the  
 5 declaration, but yes, I had reviewed them.  
 6 Q. And in reviewing them, did you learn  
 7 that the debtor had in fact carried the notes  
 8 as assets on its balance sheet or on its  
 9 schedules of assets and liabilities?  
 10 MR. RUKAVINA: I'm going to object  
 11 to the form.  
 12 THE WITNESS: I was aware that the  
 13 debtor sought to collect on the note from  
 14 HCMFA, the notes.  
 15 BY MR. MORRIS:  
 16 Q. Are you aware that Mr. Dondero was  
 17 in control of Highland Capital Management, LP  
 18 from at least the date of the bankruptcy filing  
 19 in October 2019 through around January 9th,  
 20 2020?  
 21 A. Yes.  
 22 Q. Okay. Are you aware that, while  
 23 Mr. Dondero was in control of the debtor during  
 24 that period, that Highland filed statements of  
 25 financial affairs and schedules of assets?

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1 D. Sauter  
 2 A. Generally, I guess, yes.  
 3 But I'm not aware of a particular  
 4 document called statement of financial affairs.  
 5 Q. Are you aware that while Mr. Dondero  
 6 was in control of Highland during the  
 7 bankruptcy, the debtor filed documents stating  
 8 that the notes were assets of the estate?  
 9 A. I was not.  
 10 Q. Okay. Did you ever, as part of your  
 11 investigation, try to see how the debtor  
 12 treated the notes in its court filings?  
 13 A. I did not, beyond the filing of the  
 14 complaint.  
 15 Q. So you never had a conversation with  
 16 anybody – withdrawn.  
 17 Did you ever ask Mr. Waterhouse how  
 18 the debtor treated the notes in its books and  
 19 records?  
 20 A. No.  
 21 Q. Did you ever ask Mr. Waterhouse how  
 22 HCMFA treated the notes in its books and  
 23 records?  
 24 A. No.  
 25 Q. Have you been following developments

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1 D. Sauter  
 2 the notes to the outside auditors.  
 3 MR. RUKAVINA: I'll object again.  
 4 THE WITNESS: Yes, I am aware.  
 5 Q. Have you ever seen HCMFA's audited  
 6 financial statements?  
 7 A. I don't recall.  
 8 I think you asked me that earlier.  
 9 And I may have seen them, but I don't recall  
 10 specifically.  
 11 Q. Do you recall looking at the audited  
 12 financial statements as part of your  
 13 investigation?  
 14 A. No.  
 15 Q. Let's put up HCMFA's audited  
 16 financial statements for the period ending  
 17 December 31st, 2018. And it's previously been  
 18 marked as Deposition Exhibit 45.  
 19 (Exhibit 45, Consolidated Financial  
 20 Statements and Supplemental Information  
 21 December 31, 2018, D-CNL002273-296, previously  
 22 marked for identification.)  
 23 Q. Do you see the first page there?  
 24 This is the HCMFA consolidated  
 25 financial statements for the period ending

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1 D. Sauter  
 2 in this particular adversary proceeding?  
 3 A. Yes.  
 4 Q. Are you aware that both HCMFA and  
 5 Highland disclosed the existence of the notes  
 6 to their outside auditors within 30 days of  
 7 their execution?  
 8 MR. RUKAVINA: Objection, form.  
 9 THE WITNESS: Yes.  
 10 And it's my understanding that's why  
 11 the notes were prepared.  
 12 Q. And what's that understanding based  
 13 on?  
 14 MR. RUKAVINA: And now, Mr. Sauter,  
 15 let's be very careful here.  
 16 Please answer only if it's based on  
 17 factual information that a nonlawyer told you.  
 18 THE WITNESS: Yeah. I believe  
 19 Mr. Waterhouse told me that he needed a note to  
 20 document the transfer of funds.  
 21 BY MR. MORRIS:  
 22 Q. Okay. But I asked you a different  
 23 question, and that's simply whether or not  
 24 you're aware as you sit here today whether  
 25 HCMFA and Highland disclosed the existence of

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1 D. Sauter  
 2 December 31st, 2018.  
 3 Do you see that?  
 4 A. I do.  
 5 Q. And I think you said you may have  
 6 seen it before.  
 7 Did I get that wrong?  
 8 A. I said I may have.  
 9 In looking at this, I don't think  
 10 I've ever seen this document.  
 11 Q. Okay. Can we just go to the third  
 12 page and see the date.  
 13 Do you see that this is the report  
 14 of the independent auditors  
 15 PricewaterhouseCoopers?  
 16 A. Yes.  
 17 Q. And you do see it's dated June 3rd,  
 18 2019?  
 19 A. Yes.  
 20 Q. And do you understand that this  
 21 document was prepared by HCMFA's outside  
 22 auditors prior to Highland's bankruptcy filing?  
 23 A. That's what it purports to be.  
 24 Q. Okay. And it also purports to have  
 25 been prepared prior to the commencement of the



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1 D. Sauter  
 2 adversary proceeding as you understand the  
 3 timing. Correct?  
 4 A. Yep.  
 5 Q. Let's go to Page 17, please.  
 6 Do you see there's a section in the  
 7 audited financial statements called Subsequent  
 8 Events?  
 9 A. Yep.  
 10 Q. Do you have any understanding as to  
 11 what a Subsequent Events section is in audited  
 12 financial statements?  
 13 A. Yes.  
 14 Q. What's your understanding of what  
 15 that section is supposed to include?  
 16 A. It's intended to pick up events that  
 17 occurred after the date of the financials but  
 18 prior to the date the financials are  
 19 executed – or issued.  
 20 Q. And do you see in the second  
 21 paragraph there's a description of the two  
 22 notes?  
 23 A. Yes.  
 24 Q. Okay. You were not aware that the  
 25 two notes were included in HCMFA's audited

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1 D. Sauter  
 2 independent – an independent outside firm  
 3 called PricewaterhouseCoopers?  
 4 A. I assume they're audited financials.  
 5 And yes, what you've shown me, it  
 6 appears as though they were prepared by  
 7 PricewaterhouseCoopers.  
 8 Q. Okay. Would you agree with me that  
 9 it's inconsistent that the notes can't be both  
 10 a mistake and be reported as valid obligations  
 11 in the audited financial statements?  
 12 MR. RUKAVINA: I'll object.  
 13 This witness is not an expert. He  
 14 has no personal knowledge. This is well  
 15 outside the scope of his factual investigation  
 16 in May of 2021.  
 17 BY MR. MORRIS:  
 18 Q. You can answer, sir.  
 19 A. I would agree that the two  
 20 statements are at odds with one another.  
 21 Q. Okay. So I'm just asking you  
 22 whether – now that you know that HCMFA  
 23 included these in the audited financial  
 24 statements, does that cause you to question at  
 25 all your conclusion that the execution of the

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1 D. Sauter  
 2 financial statements for – as subsequent  
 3 events at the time you executed your  
 4 declaration. Correct?  
 5 A. Correct.  
 6 Q. Now that you know that, do you think  
 7 HCMFA made a mistake in including these notes  
 8 in the audited financial statements, or does it  
 9 cause you to reconsider your conclusion that  
 10 the issuance of the notes was a mistake?  
 11 MR. RUKAVINA: I'll object to that  
 12 question based on form.  
 13 THE WITNESS: You're asking me for  
 14 my legal conclusion?  
 15 Q. No, I'm not actually, but it  
 16 probably wasn't a great question.  
 17 So your conclusion was that the  
 18 execution of the notes was a mistake. Correct?  
 19 A. Yes.  
 20 Q. But HCMFA is reporting the notes as  
 21 part of its audited financial statements.  
 22 Correct?  
 23 A. Yes.  
 24 Q. And do you understand that these  
 25 financial statements have been audited by

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1 D. Sauter  
 2 notes was a mistake?  
 3 MR. RUKAVINA: I'll again object.  
 4 This witness is not an expert. He's  
 5 not going to be a trial expert. And a motion  
 6 to amend has already been agreed upon and ruled  
 7 upon.  
 8 BY MR. MORRIS:  
 9 Q. You can answer, sir.  
 10 A. I would say that the audited  
 11 financials were prepared by  
 12 PricewaterhouseCoopers with input from the  
 13 accounting team.  
 14 And as I stated previously, I think  
 15 there was an – a breakdown in the process that  
 16 should have occurred, and had others looked at  
 17 this, they wouldn't have come to the same  
 18 conclusion.  
 19 Q. So do you believe, based on the  
 20 investigation that you did, that a second  
 21 mistake occurred not only in signing the notes  
 22 but including them in the audited financial  
 23 statements?  
 24 MR. RUKAVINA: Again, I'll object.  
 25 This witness is not an expert. He

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1 D. Sauter  
 2 has no personal knowledge.  
 3 THE WITNESS: Yeah, I can't tell you  
 4 whether that's a mistake.  
 5 My experience is that generally  
 6 accounting folks internally said that.  
 7 So if the accounting folks made a  
 8 determination that the notes should be included  
 9 as a subsequent event, then the auditors would  
 10 include it as a subsequent event.  
 11 BY MR. MORRIS:  
 12 Q. Okay. Do you know, is there anybody  
 13 at HCMFA who's responsible for overseeing the  
 14 preparation of the audited financial  
 15 statements?  
 16 A. I think Mr. Waterhouse.  
 17 Q. When did you first learn that the  
 18 notes had been included in the financial  
 19 statements?  
 20 Are you learning that for the first  
 21 time right now or did you know that before  
 22 today?  
 23 A. I think I heard that a couple weeks  
 24 ago.  
 25 MR. RUKAVINA: Let's be careful here

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1 D. Sauter  
 2 A. Correct.  
 3 Q. Okay. You don't attribute that  
 4 statement to any particular person. Correct?  
 5 A. That's correct.  
 6 Q. What is the basis for your statement  
 7 that the debtor accepted responsibility to  
 8 HCMFA?  
 9 A. It would be that the debtor's  
 10 employees who performed the valuation function  
 11 acknowledged that they had made a mistake.  
 12 Q. And who are those employees?  
 13 A. Well, ultimately I don't know  
 14 exactly who it was that came to that  
 15 determination, but I think it was Frank  
 16 Waterhouse and Thomas Surgent.  
 17 Q. Did you ever interview Mr. Surgent  
 18 as part of your investigation?  
 19 A. No, I was prohibited from speaking  
 20 with him.  
 21 Q. So you're not aware of  
 22 Mr. Waterhouse ever saying that the debtor  
 23 accepted responsibility – withdrawn.  
 24 You're not aware of Mr. Surgent –  
 25 withdrawn.

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1 D. Sauter  
 2 again, Mr. Sauter, to exclude our  
 3 communications, please.  
 4 THE WITNESS: Okay.  
 5 Q. Do you know if HCMFA ever reached  
 6 out to PricewaterhouseCoopers to inform them  
 7 that their audited financial statements were  
 8 incorrect?  
 9 A. I don't know.  
 10 Q. Do you know whether the debtor  
 11 included reference to the notes in its audited  
 12 financial statements?  
 13 A. I don't.  
 14 Q. Let's go back to your declaration,  
 15 please, Paragraph 28.  
 16 Okay. So Paragraph 28 says: "The  
 17 debtor accepted responsibility to HCMFA for  
 18 having caused the NAV error, and the debtor  
 19 ultimately, whether through insurance or its  
 20 own funds, compensated HCMFA for the above  
 21 payments."  
 22 Have I read that correctly?  
 23 A. Correct.  
 24 Q. Paragraph 28 doesn't cite any source  
 25 for that statement. Right?

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1 D. Sauter  
 2 You have no personal knowledge that  
 3 Mr. Surgent accepted, on behalf of the debtor,  
 4 responsibility for the NAV error. Correct?  
 5 A. I have no personal knowledge of  
 6 that, correct.  
 7 Q. Okay. And did Mr. Waterhouse tell  
 8 you that the debtor accepted responsibility to  
 9 HCMFA for having caused the NAV error?  
 10 A. I think Mr. Waterhouse said that the  
 11 HCMFA employees who formed the valuation  
 12 committee ultimately concluded that they had  
 13 made a mistake and they needed to accept that.  
 14 Q. Okay. It doesn't say that in your  
 15 declaration, does it?  
 16 A. Doesn't say what?  
 17 Q. That Mr. Waterhouse told you that.  
 18 A. No.  
 19 Q. In fact, is there any particular  
 20 reason why you didn't share that with the  
 21 court?  
 22 A. No.  
 23 Q. Is there anything in writing that  
 24 you've ever seen which states that the debtor  
 25 accepts responsibility to HCMFA for having

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1 D. Sauter  
 2 caused the NAV error?  
 3 A. Other than what I've identified, no.  
 4 Q. And what you've identified is that  
 5 policy. Is that right?  
 6 A. There's a policy and the  
 7 acknowledgment that the NAV error was made by  
 8 the HCMLP employees who were on the valuation  
 9 committee.  
 10 Q. Okay. You're aware that shortly  
 11 after HCMFA paid the \$7.4 million to the fund,  
 12 HCMFA sent the fund a written report. Is that  
 13 right?  
 14 A. Yes.  
 15 Q. Let's take a look at that, if we can  
 16 put that on the screen.  
 17 MS. CANTY: Sorry, John, you went  
 18 out for a second.  
 19 Can you say that again.  
 20 MR. MORRIS: Yeah.  
 21 If you could, I think – I think I  
 22 had it listed as Exhibit 37, but it's one of  
 23 the new ones. It's the memo, I think, from  
 24 HCMFA to the funds.  
 25 MS. CANTY: Got it.

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1 D. Sauter  
 2 But you didn't speak with him about  
 3 it in substance. Correct?  
 4 A. I mean, I spoke to him about the  
 5 transaction and the mistake.  
 6 I did the same thing with Dustin  
 7 Norris.  
 8 Q. Okay. But you didn't speak with  
 9 anybody about the substance of this memo.  
 10 Correct?  
 11 A. Correct.  
 12 Q. Okay. And – but you did see this  
 13 memo before you signed your declaration.  
 14 Correct?  
 15 A. Yes.  
 16 Q. Okay. And do you have an  
 17 understanding of what this memo is?  
 18 A. Yeah.  
 19 I'd like to take a – I'd like to  
 20 see the memo in full.  
 21 Q. Sure. Take your time.  
 22 So just tell Ms. Canty when you want  
 23 to see more and then she'll scroll.  
 24 Okay. Stop right there.  
 25 A. (Reviewing document.)

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1 D. Sauter  
 2 (Exhibit 182, Memo dated 5/28/19,  
 3 previously marked for identification.)  
 4 BY MR. MORRIS:  
 5 Q. Is this one of the memos that – and  
 6 again, Mr. Sauter, if you need to see more of  
 7 it, just let me know.  
 8 But is this one of the memos that  
 9 you saw as part of your investigation?  
 10 A. I believe so.  
 11 Q. Okay. And do you understand that  
 12 this is a memo from HCMFA to the board of the  
 13 Highland Global Allocation Fund?  
 14 A. Yes.  
 15 Q. And this is where HCMFA describes  
 16 for the board the resolution of the NAV error.  
 17 Correct?  
 18 A. Correct.  
 19 Q. Okay. And did you discuss this memo  
 20 with anybody as part of your investigation?  
 21 A. I mean, other than reviewing it, no.  
 22 Q. So – and how did you obtain a copy  
 23 of it?  
 24 A. Mr. Post.  
 25 Q. So Mr. Post gave it to you.

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1 D. Sauter  
 2 Yes. Okay.  
 3 Q. So then the second page is this NAV  
 4 error breakdown.  
 5 Do you see that?  
 6 A. Yes.  
 7 Q. All right. We'll come to that, but  
 8 let's go back to the first page.  
 9 Have you taken a look at the second  
 10 paragraph there that begins: "The advisor and  
 11 Houlihan Lokey, an independent third party  
 12 expert valuation consultant approved by the  
 13 board," have you read that paragraph?  
 14 A. Yes.  
 15 Q. Okay. To the best of your  
 16 knowledge, did HCMFA accurately define "NAV  
 17 error" for the board in that paragraph?  
 18 MR. RUKAVINA: Objection –  
 19 THE WITNESS: As far as I know, yes.  
 20 MR. RUKAVINA: This witness is not  
 21 an expert and has no personal knowledge.  
 22 Q. Do you have any reason to believe  
 23 that HCMFA did not accurately describe for the  
 24 board the definition of "NAV error"?  
 25 A. No.

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1 D. Sauter

2 Q. Do you have any reason to believe –

3 take a look at the last sentence.

4 "The orderly determination and

5 adoption of the weighted fair valuation

6 methodology resulted in NAV errors in the

7 fund."

8 Do you see that?

9 A. Yes.

10 Q. And that's what's being defined as

11 the NAV error. Correct?

12 A. Yes.

13 Q. Do you have any reason to believe

14 that that sentence is false or misleading in

15 any way?

16 A. I do not.

17 Q. Nothing you uncovered during your

18 investigation caused you to believe that that

19 sentence was false or misleading in any way.

20 Correct?

21 A. No.

22 Q. Okay. And the advisor was the

23 entity that made the orderly determination.

24 Correct?

25 A. That's what this memo says.

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1 D. Sauter

2 A. I – I don't know.

3 Q. Do you know whether anybody ever

4 suggested that Houlihan Lokey was responsible

5 for the valuation error?

6 A. I don't.

7 Q. Did you ever ask anybody if Houlihan

8 Lokey was responsible for the valuation error?

9 A. No.

10 Q. Do you know if – to the best of

11 your knowledge, this memo was given to the

12 board by HCMFA. Correct?

13 A. Yes.

14 Q. Did – having reviewed the memo, is

15 there anything that you're aware of in this

16 memo where HCMFA tells the board that HCMLP is

17 responsible for the NAV error?

18 A. No.

19 And I don't think that they would.

20 It would be irrelevant.

21 MR. MORRIS: I move to strike the

22 latter portion of the answer.

23 Q. Let's take a look at the bottom

24 paragraph there.

25 Do you see that there's a reference

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1 D. Sauter

2 Q. Okay. Who's Houlihan Lokey? Do you

3 know who Houlihan Lokey is?

4 A. It's a third party valuation firm.

5 Q. Do they have a good reputation?

6 A. Yes.

7 Q. And did they do the valuation of

8 TerreStar?

9 A. That's my understanding.

10 Q. Okay. And were they retained by the

11 advisor or by HCMLP?

12 A. I don't know.

13 Q. Did you ever ask anybody who hired

14 Houlihan Lokey?

15 A. I did not.

16 Q. Do you know whether HCMFA utilizes

17 Houlihan Lokey's valuation services in the

18 ordinary course of its business?

19 A. I don't know.

20 I know that Houlihan Lokey has been

21 utilized by either HCMLP, HCMFA or Nexpoint

22 Advisors in the past.

23 Q. And to the best of your knowledge,

24 has – have those entities continued to use

25 Houlihan Lokey even after May 2019?

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1 D. Sauter

2 to two different payments?

3 A. Yes.

4 Q. A payment of approximately

5 \$5.2 million was made on February 15th, 2019,

6 and a second payment of approximately

7 \$2.4 million was made on May 2nd.

8 Do I have that right?

9 A. Yes.

10 Q. Do you know what the source of

11 funding was for the first payment?

12 A. I do not.

13 Q. Did you ever ask anybody how

14 HCMFA – withdrawn.

15 Did you ever ask anybody what the

16 source of HCMFA's funding was to make the

17 payment on February 15th, 2019?

18 A. Say that again.

19 Q. Did you ever ask anybody what the

20 source of HCMFA's capital was to make that

21 payment on February 15th?

22 A. I was told that it was a transfer

23 from HCMLP.

24 Q. You were told that the transfer from

25 HCMLP was made in February of 2019?

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1 D. Sauter  
 2 A. Yes.  
 3 Q. Who told you that?  
 4 A. Mr. Waterhouse.  
 5 Q. Okay. Do you know what the source  
 6 was – hold on one second.  
 7 And do you know what the source of  
 8 the second payment was, that \$2.4 million on  
 9 May 2nd, 2019?  
 10 A. HCMLP.  
 11 Q. Now, we saw earlier that one of the  
 12 notes was for \$2.4 million on May 2nd.  
 13 Do you recall that?  
 14 A. Yes. Yes.  
 15 Q. Okay. So is it fair – did you  
 16 conclude as part of your investigation that at  
 17 least the amount and the date of the payment  
 18 matched the amount and the date of the note?  
 19 A. I did on the second note, yes.  
 20 Q. Okay. But the – neither the amount  
 21 nor the date of the first payment matched the  
 22 amount or the date of the second note.  
 23 Correct?  
 24 A. That's correct.  
 25 Q. Let's take a look at the second

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1 D. Sauter  
 2 A. That's what it appears to show.  
 3 Q. And during your investigation, were  
 4 you aware that HCMFA had obtained almost  
 5 \$5 million in connection with the NAV error  
 6 that it was using to fund the payment to GAF?  
 7 A. I subsequently learned that, yes.  
 8 Q. And were you aware prior to the time  
 9 that you signed your declaration – I apologize  
 10 if I asked this before – withdrawn.  
 11 Were you aware of the almost  
 12 \$5 million in insurance proceeds that was –  
 13 that were obtained by HCMFA before you signed  
 14 your declaration?  
 15 A. I was not.  
 16 Q. So that's new information for you  
 17 since the time you signed your declaration?  
 18 A. Yes.  
 19 Q. Okay. Were you aware at the time  
 20 you signed your declaration that HCMFA had paid  
 21 an insurance deductible of almost \$250,000?  
 22 A. I was not.  
 23 Q. Is it your understanding that after  
 24 the sources described in the top portion of  
 25 this page, that the total amount needed by the

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1 D. Sauter  
 2 page.  
 3 Have you seen this before?  
 4 A. I have.  
 5 Q. Did you ever have any discussions  
 6 with anybody at any time during your  
 7 investigation about this page?  
 8 A. I did at some point, and I don't  
 9 recall exactly when.  
 10 Q. Okay.  
 11 A. But probably it may have been after  
 12 the declaration.  
 13 Q. Okay. Do you understand that the  
 14 first – I think it's a row – shows that the  
 15 total estimated net loss resulting from the NAV  
 16 error was approximately \$7.44 million?  
 17 A. Yes, I see that.  
 18 Q. Okay. And do you understand that  
 19 this chart depicts the sources that are going  
 20 to be called upon to fund the \$7.44 million  
 21 payment from HCMFA to the fund?  
 22 A. I – yes, I understand that now.  
 23 Q. And do you understand that  
 24 approximately \$5 million was going to be funded  
 25 through insurance proceeds?

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1 D. Sauter  
 2 advisor to make GAF whole was approximately  
 3 \$2.4 million?  
 4 That's the 2,398,842 number there.  
 5 A. I've not done the math.  
 6 Q. Well, that number there matches the  
 7 number in the bottom paragraph of the first  
 8 page, if we can scroll back up.  
 9 A. Yeah. No, I understand.  
 10 Q. Okay. So that's the total payment  
 11 that was made on May 2nd, 2019, according to  
 12 this memo?  
 13 A. That's total payment made to GAF.  
 14 What I'm unclear about is that it's  
 15 the total amount out of pocket from the  
 16 advisor, which may be different, but...  
 17 Q. Do you know what the total out of  
 18 pocket was from the advisor?  
 19 A. I don't.  
 20 (Simultaneous crosstalk.)  
 21 THE WITNESS: – what's listed here.  
 22 Q. And do you understand that a total  
 23 of \$7.44 million was paid by HCMFA to GAF?  
 24 A. I do.  
 25 Q. Okay. And do you have any reason to

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1 D. Sauter  
 2 believe that the source of the funding is  
 3 anything other than what's set forth on this  
 4 page?  
 5 A. I don't.  
 6 Q. And the \$2.4 million, that's the  
 7 \$2.4 million that HCMFA obtained from Highland  
 8 on May 2nd. Correct?  
 9 MR. RUKAVINA: Objection.  
 10 The witness is not qualified to  
 11 answer that.  
 12 Q. During the course of your  
 13 investigation, did you learn that Highland  
 14 transferred \$2.4 million to HCMFA on May 2nd,  
 15 2019 so that it could pay GAF?  
 16 A. That's what I was told.  
 17 Q. Okay. Is it your conclusion that  
 18 Highland was responsible for the \$7.44 million  
 19 estimated net loss resulting from the NAV  
 20 error?  
 21 MR. RUKAVINA: Objection.  
 22 This witness is not an expert, and  
 23 he has no personal knowledge.  
 24 THE WITNESS: Yes, I believe that  
 25 that's accurate.

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1 D. Sauter  
 2 as a loan. Correct?  
 3 A. I didn't say negligent, and I don't  
 4 know that I can make that conclusion.  
 5 But it should have been indemnity  
 6 and reimbursement for the error that Highland  
 7 created.  
 8 Q. Okay. Can you tell me why HCMFA  
 9 took \$5 million from an insurance company at  
 10 the same time it was being made whole by  
 11 Highland?  
 12 MR. RUKAVINA: I'll instruct you not  
 13 to answer that.  
 14 That is attorney client privileged  
 15 and work product.  
 16 Q. Sir, as part of your investigation,  
 17 did you make any assessment as to why HCMFA  
 18 accepted \$5 million in proceed – in insurance  
 19 proceeds at the same time it believed that the  
 20 \$7.4 million was being paid by Highland as  
 21 compensation?  
 22 MR. RUKAVINA: Just want to make  
 23 sure, Mr. Sauter, you understand that counsel  
 24 is asking about your investigation in May of  
 25 this year as referenced in your declaration and

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1 D. Sauter  
 2 BY MR. MORRIS:  
 3 Q. And that's because you believe the  
 4 notes were executed by mistake. Correct?  
 5 A. I believe that Highland made the NAV  
 6 error and was responsible for making GAF whole,  
 7 albeit vis-à-vis HCMFA, its advisor.  
 8 Q. Okay. So because Highland created  
 9 the NAV error, your understanding based on your  
 10 discussions with Mr. Post and Mr. Norris is  
 11 that Highland paid the \$7.4 million to HCMFA  
 12 not as a loan but as compensation for the error  
 13 that it made.  
 14 Do I have that right?  
 15 A. That would not be based on my  
 16 discussions with Mr. Post and Mr. Norris.  
 17 But yes, your conclusion is  
 18 accurate.  
 19 Q. Okay. And let's be really clear  
 20 what the conclusion is.  
 21 It's your conclusion that because  
 22 Highland was negligent in making the NAV error,  
 23 that when it paid \$7.4 million to HCMFA on  
 24 May 2nd and May 3rd, 2019, it did so as  
 25 compensation for its negligent conduct and not

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1 D. Sauter  
 2 not the investigation generally.  
 3 THE WITNESS: Yes.  
 4 And as I said, the May declaration,  
 5 I was unaware of the \$5 million in insurance  
 6 payments.  
 7 BY MR. MORRIS:  
 8 Q. Now that you're aware of it, does it  
 9 cause you to question your conclusion that the  
 10 payment made by Highland in May of 2019 was  
 11 compensation and not a loan?  
 12 MR. RUKAVINA: I instruct you not to  
 13 answer that, Mr. Sauter.  
 14 MR. MORRIS: On what basis? That  
 15 you don't like the question?  
 16 MR. RUKAVINA: No.  
 17 Let's be professional here, John. I  
 18 don't know why you've got to get –  
 19 (Simultaneous crosstalk.)  
 20 MR. MORRIS: I don't understand.  
 21 It's a –  
 22 MR. RUKAVINA: No, you – the way –  
 23 MR. MORRIS: It's an investigation.  
 24 He made a conclusion in the investigation.  
 25 He's now learned a new fact. I'm

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1 D. Sauter  
 2 allowed to ask him if it changes his  
 3 conclusion.  
 4 MR. RUKAVINA: Let me just explain  
 5 what I understand, what's going on here.  
 6 He undertook an evidentiary and  
 7 factual conclusion, which is fair game for you  
 8 to ask about. Pardon me.  
 9 He's told you that he didn't know  
 10 about this. His declaration says – I'm  
 11 paraphrasing – it appears that there was a  
 12 mistake.  
 13 He has never claimed to have  
 14 personal knowledge. He has never claimed to be  
 15 an expert. He is not going to be a trial  
 16 witness. He has never testified and is not  
 17 testifying today that there was a mistake.  
 18 But most importantly, and why I'm  
 19 instructing him not to answer, is because the  
 20 issue of how this payment relates to the  
 21 insurance payable, which again arose after his  
 22 declaration and is something that he and I have  
 23 discussed and is my work product. That is not  
 24 a part of his factual investigation.  
 25 So I am instructing him not to

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1 D. Sauter  
 2 Q. Okay. Does that cause you to change  
 3 the conclusion that you reached as set forth in  
 4 your declaration?  
 5 A. I don't know enough about the  
 6 insurance proceeds, the insurance policy and  
 7 what transpired at the time to make that  
 8 determination.  
 9 Q. Do you know if HCMFA has ever  
 10 informed the insurance carrier that HCMLP was  
 11 responsible for the NAV error?  
 12 A. I do not.  
 13 Q. Did you ever ask anybody?  
 14 A. I did not.  
 15 Q. As part of your investigation, did  
 16 you try to determine whether HCMFA ever told  
 17 the insurance company that HCMLP was  
 18 responsible for the NAV error?  
 19 A. I think I already said I wasn't  
 20 aware of the insurance proceeds at the time of  
 21 my declaration.  
 22 Q. Has HCMFA returned all or any  
 23 portion of the insurance proceeds to the  
 24 carrier?  
 25 A. I wouldn't know.

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1 D. Sauter  
 2 answer. There's no point in you and I arguing  
 3 about it now.  
 4 If you feel my objection is  
 5 inappropriate, then you have your rights  
 6 intact.  
 7 MR. MORRIS: All right. I'm going  
 8 to continue to ask questions.  
 9 BY MR. MORRIS:  
 10 Q. Sir, you had this document before  
 11 you signed your declaration. Correct?  
 12 A. I did.  
 13 Q. Okay. And your conclusion was that  
 14 because Highland made the NAV mistake, the  
 15 \$7.4 million payment was supposed to be  
 16 compensation and not in the form of a loan.  
 17 Correct?  
 18 MR. RUKAVINA: Objection, form.  
 19 THE WITNESS: Correct.  
 20 Q. Okay. And now the document that you  
 21 had before you signed your declaration  
 22 discloses that HCMFA received almost \$5 million  
 23 as part of the insurance proceeds in connection  
 24 with the NAV error. Correct?  
 25 A. Yes.

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1 D. Sauter  
 2 Q. Have you ever asked anybody?  
 3 A. No.  
 4 MR. RUKAVINA: You've got to wait a  
 5 second, Mr. Sauter, before answering.  
 6 Go ahead.  
 7 Q. During the course of your  
 8 investigation, did anybody tell you that on  
 9 May 3rd, 2019, HCMFA needed another \$5 million?  
 10 A. Not during the course of my initial  
 11 investigation.  
 12 Q. Are you aware of that today?  
 13 A. I am, yes.  
 14 Q. Okay. And do you understand that  
 15 that \$5 million was needed in order for HCMFA  
 16 to pay what's called a consent fee?  
 17 MR. RUKAVINA: I'm going to object.  
 18 And I'm going to instruct the  
 19 witness not to answer.  
 20 Again, this is attorney-client  
 21 privilege and work product.  
 22 He learned about all of this well  
 23 after his investigation and well after his  
 24 declaration.  
 25 MR. MORRIS: These are facts.

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1 D. Sauter  
 2 I don't get it. These are facts.  
 3 And I'm not limited to his declaration. He's  
 4 here under a subpoena. I can ask him whatever  
 5 I want factually.  
 6 I don't understand, Davor.  
 7 MR. RUKAVINA: Well, there's three  
 8 things.  
 9 You're generally right, you can ask  
 10 him whatever you want factually. I'm not  
 11 saying that he – I haven't prevented you from  
 12 asking factually. That's issue one.  
 13 Issue two, he's not a trial witness.  
 14 His role is limited to the motion to amend,  
 15 which was granted by consent.  
 16 And issue three, the question you're  
 17 asking him right now, if he has any knowledge,  
 18 he can have only through discussions with me  
 19 and things he's learned through me in this  
 20 litigation. He's told you he did not know  
 21 about this during his investigation.  
 22 So I'm going to stick by my  
 23 instruction not to answer that, Mr. Sauter.  
 24 MR. MORRIS: And I'm going to tell  
 25 you he is a trial witness. I will certainly be

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1 D. Sauter  
 2 Q. Did you ever have – withdrawn.  
 3 Did anybody ever tell you that  
 4 Highland was responsible for any consent fee  
 5 that HCMFA paid?  
 6 MR. RUKAVINA: You're instructed not  
 7 to answer that to the extent that whoever told  
 8 you that would be an attorney.  
 9 BY MR. MORRIS:  
 10 Q. Okay. Did anybody other than an  
 11 attorney ever tell you that Highland was  
 12 responsible for any consent fee ever paid by  
 13 HCMFA?  
 14 A. That Highland was responsible for  
 15 paying a consent fee?  
 16 Q. That Highland was responsible for  
 17 any consent fee that was paid by HCMFA.  
 18 A. I don't believe so.  
 19 Q. During your discussions as part of  
 20 your investigation with Mr. Norris and Mr. Post  
 21 and Mr. Dondero and Mr. Waterhouse, did anybody  
 22 tell you why Highland paid HCMFA \$5 million on  
 23 May 3rd, 2019?  
 24 A. Yes.  
 25 Q. And why did – what did they tell

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1 D. Sauter  
 2 calling him at trial because he conducted an  
 3 investigation.  
 4 And I don't think that I need to  
 5 stop asking questions as of the date of his  
 6 declaration. I'm asking purely factual  
 7 questions.  
 8 So you know, if you want to continue  
 9 to direct him not to answer, we'll deal with  
 10 it, but I'm going to continue to ask him  
 11 factual questions.  
 12 MR. RUKAVINA: To me, this is –  
 13 (Simultaneous crosstalk.)  
 14 BY MR. MORRIS:  
 15 Q. Mr. Sauter, do you understand that  
 16 the \$5 million was needed by HCMFA on May 3rd,  
 17 2019 to pay a consent fee?  
 18 MR. RUKAVINA: I'm going to instruct  
 19 you not to answer that, Mr. Sauter.  
 20 Q. Are you going to follow your  
 21 counsel's instructions?  
 22 A. I am.  
 23 Q. Do you know what a consent fee is,  
 24 sir?  
 25 A. I don't.

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1 D. Sauter  
 2 you?  
 3 A. It was payment for a consent fee.  
 4 Q. All right. Okay.  
 5 And who told you that?  
 6 A. Mr. Norris.  
 7 Q. And did Mr. Norris tell you that  
 8 Highland had any responsibility for the payment  
 9 of that consent fee by HCMFA?  
 10 A. I don't know that we got into that.  
 11 Q. Okay. Did anybody else tell you  
 12 that the May 3rd, 2019 \$5 million payment was  
 13 made so that HCMFA could pay the consent fee?  
 14 MR. RUKAVINA: Again, I'll instruct  
 15 you not to answer the extent you learned  
 16 anything from an attorney.  
 17 THE WITNESS: I don't believe so.  
 18 Q. Okay. Did you speak with  
 19 Mr. Waterhouse about the \$5 million consent fee  
 20 that Mr. Norris mentioned to you?  
 21 A. I have not spoken with  
 22 Mr. Waterhouse for quite some time about this,  
 23 since he's represented by counsel.  
 24 Q. No.  
 25 But as part of your investigation,



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1 D. Sauter  
 2 after you learned from Mr. Norris that the  
 3 \$5 million was paid so that HCMFA could pay the  
 4 consent fee, did you follow up with  
 5 Mr. Waterhouse at all?  
 6 A. I didn't know about the consent fee  
 7 at the time of my investigation.  
 8 Q. Okay. When did Mr. Norris tell you  
 9 about the consent fee?  
 10 A. Probably within the last six weeks.  
 11 Q. And does learning about the consent  
 12 fee from Mr. Norris cause you to question your  
 13 conclusion that the \$7.4 million was paid by  
 14 Highland to HCMFA on account of the mistake  
 15 that Highland made on the NAV error?  
 16 MR. RUKAVINA: I'll again object  
 17 that this witness is not an expert and he has  
 18 no personal knowledge.  
 19 Q. You can answer, sir.  
 20 A. I wasn't aware of the consent fee.  
 21 I don't know much about the consent  
 22 fee. I don't know what it is, who paid it, why  
 23 they paid it, what the consideration was for  
 24 it.  
 25 So I'm not prepared to answer that.

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1 D. Sauter  
 2 a promissory note where he was the maker?  
 3 A. I was not.  
 4 Q. Nobody told you that as part of your  
 5 investigation, that the way Highland was able  
 6 to transfer the \$7.4 million to HCMFA was to  
 7 get that money from Mr. Dondero on account of a  
 8 note that he signed?  
 9 A. No one told me that.  
 10 Q. You're hearing that for the first  
 11 time today?  
 12 A. I am.  
 13 Q. If Mr. Dondero paid down  
 14 \$7.4 million in obligations that he owed to  
 15 Highland, would it change your view that it was  
 16 illogical for Highland to loan that money to  
 17 HCMFA in May of 2019?  
 18 A. Again, without seeing the documents  
 19 and the timing and the details of the  
 20 transaction, I can't answer that.  
 21 Q. Okay. Now, the advisors have  
 22 contracts with the funds they advise. Correct?  
 23 A. Advisory agreements, yes.  
 24 Q. And those advisory agreements are  
 25 subject to annual renewal. Correct?

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1 D. Sauter  
 2 Q. Okay. Let's go back to your  
 3 declaration, please, Paragraph 31.  
 4 Is it fair to summarize this  
 5 paragraph as saying that because HCMFA and the  
 6 debtor had executed that acknowledgment, that  
 7 it would have been illogical for Highland to  
 8 lend HCMFA \$7.4 million in May 2021?  
 9 A. Yes.  
 10 Q. Okay. And what was the source of  
 11 your information for Paragraph 31?  
 12 A. I'm not sure I follow.  
 13 Q. So you've got the acknowledgment  
 14 that you attached as Exhibit 4. Correct?  
 15 A. Yes.  
 16 Q. Did you discuss with anybody during  
 17 your investigation any of the facts or  
 18 conclusions that are set forth in Paragraph 31  
 19 or did you – or is it based just on your  
 20 review of Exhibit 4?  
 21 A. Based on my review.  
 22 Q. Okay. Are you aware that in  
 23 May 2019, Mr. Dondero contemporaneously and  
 24 personally paid Highland exactly \$7.4 million  
 25 that was owed by Mr. Dondero to Highland under

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1 D. Sauter  
 2 A. Yes.  
 3 Q. As Nexpoint's general counsel, did  
 4 you participate in the annual renewal process  
 5 in the fall of 2020?  
 6 A. I would have participated in the  
 7 process, but only with respect to NXRT,  
 8 Nexpoint Residential Trust and Nexpoint Real  
 9 Estate Finance.  
 10 Q. I see.  
 11 A. I had some limited involvement in  
 12 the 15(c) process with respect to Nexpoint's  
 13 strategic opportunities fund, but very limited.  
 14 Q. Do you know who the representative  
 15 was for HCMFA who was responsible for the 15(c)  
 16 annual renewal process in the fall of 2020?  
 17 A. I don't.  
 18 I can speculate, and I would assume  
 19 it's Mr. – a combination of Mr. Norris and  
 20 Mr. Sella (phonetic).  
 21 Q. And why do you speculate that it's a  
 22 combination of them?  
 23 A. Because they were actively involved  
 24 in the process just from conversations I had  
 25 with them.

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1 D. Sauter  
 2 Q. Okay. Have you ever seen any of the  
 3 reports that the advisors sent to the retail  
 4 board in connection with the 15(c) annual  
 5 review?  
 6 MR. RUKAVINA: Now, this one,  
 7 Mr. Sauter, I am going to instruct you not to  
 8 answer.  
 9 MR. MORRIS: Have you ever seen the  
 10 document? That's what, you're going to  
 11 instruct him not to –  
 12 MR. RUKAVINA: Don't answer that.  
 13 Don't answer that. That relates to discovery  
 14 and work product privilege.  
 15 The document was produced to you.  
 16 Mr. Sauter helped me find that document. Other  
 17 than that, nothing about that document and his  
 18 knowledge is fair game.  
 19 MR. MORRIS: Well, I'm going to ask  
 20 my questions, and you can keep directing him  
 21 not to answer.  
 22 BY MR. MORRIS:  
 23 Q. Mr. Sauter, have you ever seen any  
 24 of the reports that were issued by the advisors  
 25 to the funds?

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1 D. Sauter  
 2 A. Could you scroll down.  
 3 Q. Sure.  
 4 A. (Reviewing document.)  
 5 Q. We can keep going.  
 6 A. All right.  
 7 What's the date on this?  
 8 Q. October 23rd, 2020.  
 9 A. I honestly don't think I would have  
 10 been involved in that or seen that.  
 11 Q. Okay. Did you ever ask anybody as  
 12 part of your investigation – withdrawn.  
 13 Are you aware that the advisors were  
 14 asked to provide information to the retail  
 15 board as to the obligations that it owed to  
 16 Highland and its affiliates in connection with  
 17 the 15(c) annual review?  
 18 A. I was not.  
 19 Q. So is it fair to say that you never  
 20 saw this document as part of your  
 21 investigation?  
 22 A. I don't think so.  
 23 Q. Is it fair to say that nobody ever  
 24 told you about the advisors' responses to the  
 25 retail board in connection with the 15(c)

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1 D. Sauter  
 2 A. Could you clarify the question.  
 3 Q. Sure.  
 4 Have you ever seen any of the  
 5 reports that were issued by the advisors to the  
 6 retail board in the fall of 2020 in connection  
 7 with the 15(c) review?  
 8 MR. RUKAVINA: Mr. Sauter, I'm  
 9 instructing you not to answer that if your  
 10 answer involves working with me in this  
 11 adversary proceeding.  
 12 If you saw it otherwise as part of  
 13 business operation, that's fine.  
 14 THE WITNESS: In the fall of 2020, I  
 15 would have had – I would not have been  
 16 involved and I would not have seen anything  
 17 sent to the board.  
 18 BY MR. MORRIS:  
 19 Q. All right. Well, let's put it up on  
 20 the screen. It's, I think, a document that was  
 21 previously marked as Deposition Exhibit 59.  
 22 (Exhibit 59, Memo dated 10/23/20,  
 23 HCMFAS 000025-031, marked for identification.)  
 24 Q. Have you ever seen this document  
 25 before, sir?

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1 D. Sauter  
 2 review in October of 2020?  
 3 A. I think that's accurate.  
 4 MR. MORRIS: We're going to do the  
 5 30(b)(6) deposition on December 1st?  
 6 MR. RUKAVINA: I think I'm waiting  
 7 for you to confirm.  
 8 I think that's what –  
 9 MR. MORRIS: Let's confirm that  
 10 right now.  
 11 I'll send you an e-mail, but I  
 12 just...  
 13 MR. RUKAVINA: Okay. 10 a.m.,  
 14 Dallas?  
 15 MR. MORRIS: Yeah, that sounds fair.  
 16 BY MR. MORRIS:  
 17 Q. All right. Let's go back to your  
 18 declaration, please, Paragraph 32.  
 19 I'm almost done, sir.  
 20 So you state, among other things,  
 21 that – and I'm paraphrasing. Let me know if  
 22 I – if this is fair – that as a result of  
 23 your investigation in April of 2019, HCMFA now  
 24 believes that it has affirmative defenses to  
 25 the notes that includes the defense of mutual

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1 D. Sauter  
 2 mistake.  
 3 Do I have that right?  
 4 A. Yes.  
 5 Q. Okay. What does "mutual" – excuse  
 6 me – what does "mutual mistake" mean?  
 7 MR. RUKAVINA: Are you asking for  
 8 his legal opinion or how he used it in this  
 9 declaration?  
 10 MR. MORRIS: Only how he used it in  
 11 the declaration.  
 12 THE WITNESS: Well, wouldn't that be  
 13 a legal conclusion because it's an affirmative  
 14 defense?  
 15 BY MR. MORRIS:  
 16 Q. Well, I don't know. It's in your  
 17 declaration. I'm just asking you what you  
 18 meant when you used the phrase – withdrawn.  
 19 Let me ask a better question. Maybe  
 20 it's my fault.  
 21 Mr. Sauter, what did you mean when  
 22 you used the phrase "mutual mistake"?  
 23 A. What I meant is that there was no  
 24 analysis or consideration of what had  
 25 transpired and who is legally responsible for

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1 D. Sauter  
 2 A. You do.  
 3 Q. It does not mean that HCMFA did not  
 4 receive an amount of money exactly equal to the  
 5 principal amount of the notes. Correct?  
 6 A. Based upon what I've been told,  
 7 correct.  
 8 Q. Okay. You also write here that  
 9 Mr. Waterhouse did not "have proper authority  
 10 to sign the notes."  
 11 Do I have that right?  
 12 A. Yes.  
 13 Q. What does "proper" – what did you  
 14 mean by the phrase "proper authority"?  
 15 A. I mean going through the process of  
 16 what I would expect to see in making a loan of  
 17 \$7.4 million.  
 18 Q. So that's just your own subjective  
 19 view.  
 20 Is that fair?  
 21 A. No.  
 22 I mean, I think there's a legal  
 23 basis for that, so yeah.  
 24 Q. What's your legal basis for that?  
 25 A. There is a process to go through in

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1 D. Sauter  
 2 the payments to the fund.  
 3 A transfer was made. A note was  
 4 executed without any analysis.  
 5 Q. And do you have anything else to add  
 6 to that?  
 7 A. I don't think so.  
 8 Q. Okay. You also say that the notes  
 9 are void for lack of consideration.  
 10 Do I have that right?  
 11 A. Yes.  
 12 Q. You don't dispute that Highland paid  
 13 HCMFA \$2.4 million on May 2nd, 2019. Correct?  
 14 A. No.  
 15 Q. And you don't dispute that Highland  
 16 paid HCMFA \$5 million on May 3rd, 2019.  
 17 Correct?  
 18 A. I mean, I believe that's right.  
 19 That's what I've been told.  
 20 So yeah, I don't dispute that.  
 21 Q. Your reference to "a lack of  
 22 consideration" means only that, in your  
 23 opinion, the money should not have been  
 24 transferred in the form of a loan.  
 25 Do I have that right?

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1 D. Sauter  
 2 papering a transaction like a \$7.4 million  
 3 loan. And my understanding of the process, as  
 4 described to me by Frank Waterhouse, was not  
 5 the proper process.  
 6 Q. Is there a policy or a law that  
 7 requires a particular process to be followed  
 8 that you're aware of?  
 9 A. What I would expect is  
 10 communications among the various parties that  
 11 are involved and agreement that this should be  
 12 a loan rather than just transferring money and  
 13 sign a note.  
 14 Q. You knew when you signed this  
 15 declaration that Mr. Waterhouse in fact was an  
 16 officer of HCMFA at the time his signature was  
 17 put on the notes. Correct?  
 18 A. Yes.  
 19 Q. And is it your view that an officer  
 20 is not authorized to execute notes on behalf of  
 21 the company for which he or she works for?  
 22 A. I think every company has  
 23 limitations on authority.  
 24 Q. And what limits are you aware of on  
 25 Mr. Waterhouse – withdrawn.

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1 D. Sauter  
 2 What limits are you aware of that  
 3 existed on Mr. Waterhouse's authority to sign  
 4 notes on behalf of HCMFA in May of 2019?  
 5 A. I don't know what the HCMFA – what  
 6 the partnership agreement says, or I should say  
 7 the general partnership agreement says.  
 8 But what I would expect is the full  
 9 participation of legal, accounting and then  
 10 perhaps Mr. Dondero.  
 11 Q. Do you know if Mr. Waterhouse has  
 12 ever signed any other notes on behalf of HCMFA  
 13 or any other affiliated entity?  
 14 A. I'm sure he has.  
 15 Q. Did you do – as part of your  
 16 investigation, before reaching your conclusion  
 17 that Mr. Waterhouse didn't have proper  
 18 authority, did you try to determine whether in  
 19 fact he had previously issued notes on behalf  
 20 of HCMFA or other affiliates?  
 21 A. I can't answer your question without  
 22 knowing the facts surrounding the execution of  
 23 any particular note.  
 24 I mean, I think it matters the  
 25 amount of the note, the term of the note.

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1 D. Sauter  
 2 witness, save my questions till trial. Thank  
 3 you.  
 4 MR. MORRIS: Thank you, sir. Have a  
 5 good day.  
 6 MR. RUKAVINA: Madam Reporter, just  
 7 before we're done, just to confirm, the witness  
 8 does want his 30 days to read and review, so  
 9 please send the transcript to me with exhibits.  
 10 THE REPORTER: And Michael, do you  
 11 need a copy?  
 12 MR. AIGEN: Yeah, we'll order one,  
 13 just regular time. Doesn't need to be  
 14 expedited.  
 15 (Time Noted: 3:38 p.m.)  
 16  
 17  
 18 \_\_\_\_\_  
 19 DENNIS C. SAUTER  
 20  
 21 Subscribed and sworn to before me  
 22 this day of 2021.  
 23  
 24 \_\_\_\_\_  
 25 Notary Public

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1 D. Sauter  
 2 There's a number of factors that come into it.  
 3 Q. But you didn't –  
 4 A. So –  
 5 Q. But you made no inquiry as to any of  
 6 those issues. Correct?  
 7 A. I made an inquiry of Mr. Waterhouse  
 8 as it relates to this transaction.  
 9 Q. Okay. And again, Mr. Waterhouse did  
 10 not admit that he was not authorized to sign  
 11 these notes. Correct?  
 12 A. Sorry. He did not admit that he was  
 13 not authorized to sign the notes, correct.  
 14 Q. Okay.  
 15 MR. MORRIS: Let's just take a  
 16 five-minute break. I may be done.  
 17 It's 4:28. Let's just come back at  
 18 4:35 so I can take a break.  
 19 (Recess was taken from 3:29 p.m. to  
 20 3:37 p.m.)  
 21 MR. MORRIS: Mr. Sauter, I greatly  
 22 appreciate your time and attention today. I  
 23 have no further questions.  
 24 THE WITNESS: Okay.  
 25 MR. RUKAVINA: I'll pass the

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1 District of Columbia, to wit:  
 2 I, Stacey L. Daywalt, a Notary  
 3 Public of the District of Columbia, do hereby  
 4 certify that the within-named witness remotely  
 5 appeared before me at the time and place herein  
 6 set out, and after having been duly sworn by  
 7 me, according to law, was examined by Counsel.  
 8 I further certify that the  
 9 examination was recorded stenographically by me  
 10 and this transcript is a true record of the  
 11 proceedings.  
 12 I further certify that I am not of  
 13 counsel to any of the parties, nor an employee  
 14 of counsel, nor related to any of the parties,  
 15 nor in any way interested in the outcome of  
 16 this action.  
 17 As witness my hand and Notarial Seal  
 18 this 17th day of November, 2021.  
 19  
 20  
 21 \_\_\_\_\_  
 22 Stacey L. Daywalt, Notary Public  
 23 My Commission Expires: 4/14/2026  
 24  
 25

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1 -----I N D E X-----  
 2  
 3 WITNESS EXAMINATION BY PAGE  
 4 DENNIS C. SAUTER BY MR. MORRIS 4  
 5  
 6 -----EXHIBITS-----  
 7 PREVIOUSLY MARKED EXHIBITS PAGE LINE  
 8 Exhibit 181  
 9 Declaration of Dennis C. Sauter,  
 10 Jr. 24 3  
 11 Exhibit 54  
 12 E-mail chain with attachment dated  
 13 5/2/19  
 14 D-CNL003777-779 25 25  
 15 Exhibit 57  
 16 Promissory Note dated 5/3/19  
 17 D-CNL003764-65 29 5  
 18 Exhibit 45  
 19 Consolidated Financial Statements  
 20 and Supplemental Information  
 21 December 31, 2018  
 22 D-CNL002273-296 72 19  
 23 Exhibit 182  
 24 Memo dated 5/28/19 83 2  
 25 Exhibit 59  
 Memo dated 10/23/20  
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 21  
 22  
 23  
 24  
 25

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1 NAME OF CASE:  
 2 DATE OF DEPOSITION:  
 3 NAME OF WITNESS:  
 4 Reason Codes:  
 5 1. To clarify the record.  
 6 2. To conform to the facts.  
 7 3. To correct transcription errors.  
 8 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
 9 From \_\_\_\_\_ to \_\_\_\_\_  
 10 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
 11 From \_\_\_\_\_ to \_\_\_\_\_  
 12 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
 13 From \_\_\_\_\_ to \_\_\_\_\_  
 14 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
 15 From \_\_\_\_\_ to \_\_\_\_\_  
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 21 From \_\_\_\_\_ to \_\_\_\_\_  
 22 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
 23 From \_\_\_\_\_ to \_\_\_\_\_  
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## **EXHIBIT 20**



Kristin Hendrix - October 27, 2021

1	3
<p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 --oOo--</p> <p>5</p> <p>6 HIGHLAND CAPITAL MANAGEMENT, )</p> <p> L.P., )</p> <p>7 )</p> <p> Plaintiff, )</p> <p>8 )</p> <p> vs. ) No. 21-03004-sgj</p> <p>9 )</p> <p> HIGHLAND CAPITAL MANAGEMENT FUND )</p> <p>10 ADVISORS, L.P., )</p> <p> )</p> <p>11 Defendants. )</p> <p>12</p> <hr/> <p>13 DEPOSITION OF</p> <p>14 KRISTIN HENDRIX</p> <p>15 October 27, 2021</p> <p>16</p> <hr/> <p>17</p> <p>18 DEPOSITION OF KRISTIN HENDRIX, produced as a</p> <p>19 witness, duly sworn by me via videoconference at the</p> <p>20 instance of the DEFENDANTS, was taken in the</p> <p>21 above-styled and numbered cause on October 27, 2021,</p> <p>22 from 10:11 A.M. to 1:19 P.M., before BRANDON D. COMBS,</p> <p>23 CSR, RPR, in and for the State of Texas, reported by</p> <p>24 computerized machine shorthand, at 500 North Akard</p> <p>25 Street, 38th Floor, Dallas, Texas.</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Examination by MR. RUKAVINA 6</p> <p>4 Examination by MR. AIGEN 94</p> <p>5 Further Examination by MR. RUKAVINA 110</p> <p>6 Examination by MR. MORRIS 111</p> <p>7</p> <p>8 EXHIBITS PAGE</p> <p>9</p> <p>10 Exhibit 1 Promissory Note, 5M, May 3 30</p> <p>11</p> <p>12 Exhibit 2 Promissory Note, 2.4M, May 2 30</p> <p>13</p> <p>14 Exhibit 3 Email from David Klos, May 2, 2019, 31</p> <p>15 HCMLP to HCMFA loan</p> <p>16</p> <p>17 Exhibit 4 Promissory Note, 5M, May 3 42</p> <p>18</p> <p>19 Exhibit 5 Promissory Note, 2.4M, May 2 42</p> <p>20</p> <p>21 Exhibit 6 Promissory Note, 5M, May 3 43</p> <p>22</p> <p>23 Exhibit 7 Promissory Note, 2.4M, May 2 43</p> <p>24</p> <p>25 Exhibit 8 Info, HCMF loan 05.03.2019 56</p>
2	4
<p>1 APPEARANCES</p> <p>2</p> <p>3 MUNSCH, HARDT, KOPF &amp; HARR, PC, 500 North</p> <p>4 Akard Street, Suite 3800, Dallas, TX 75201, represented</p> <p>5 by DAVOR RUKAVINA, Attorney at Law, appeared as counsel</p> <p>6 on behalf of the Defendants.</p> <p>7 Email: drukavina@munsch.com</p> <p>8</p> <p>9</p> <p>10 PACHULSKI, STANG, ZIEHL &amp; JONES, 780 Third</p> <p>11 Avenue, 34th Floor, New York, NY 10017-2024, represented</p> <p>12 by JOHN A. MORRIS, Attorney at Law, appeared as counsel</p> <p>13 on behalf of the Plaintiff.</p> <p>14 Email: jmorris@pszjlaw.com</p> <p>15</p> <p>16</p> <p>17 STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777,</p> <p>18 Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney</p> <p>19 at Law, appeared via videoconference as counsel on</p> <p>20 behalf of the Defendants Jim Dondero, HCMS and HCRE</p> <p>21 Partners.</p> <p>22 Email: michael.aigen@stinson.com</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Exhibit 9 Info, HCMF loan 05.02.2019 56</p> <p>2</p> <p>3 Exhibit 10 Email from Scott Ellington, Dec 2, 59</p> <p>4 2020, HCM - HCMFA financial</p> <p>5 statements</p> <p>6</p> <p>7 Exhibit 11 Email from John Morris to 62</p> <p>8 James Seery, Jan 6, 2021,</p> <p>9 HCM information request</p> <p>10</p> <p>11 Exhibit 12 Letter, Dec 3, 2020, Demand on 65</p> <p>12 Promissory Notes</p> <p>13</p> <p>14 Exhibit 13 Promissory Note, \$30,746,812.33, 72</p> <p>15 May 31</p> <p>16</p> <p>17 Exhibit 14 NPA \$30.7M 76</p> <p>18</p> <p>19 Exhibit 15 HCMLP Notes Receivable 83</p> <p>20</p> <p>21 Exhibit 16 Email from Frank Waterhouse to 85</p> <p>22 Lauren Thedford, Oct 6, 2020, 15(c)</p> <p>23 follow-up</p> <p>24</p> <p>25</p>

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5	<p>1 Exhibit 17 Email from James Seery to 88</p> <p>2 James Dondero, Jan 7, 2021, demand</p> <p>3 on promissory note</p> <p>4</p> <p>5 Exhibit 18 Email from Kristin Hendrix, Jan 12, 90</p> <p>6 2021, NexPoint Note to HCMLP</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	7	<p>1 understood my question; okay?</p> <p>2 A. Yeah.</p> <p>3 MR. MORRIS: Objection.</p> <p>4 Q. (BY MR. RUKAVINA) Sometimes Counsel will</p> <p>5 make objections. Unless he instructs you not to</p> <p>6 answer, you're still required to answer my questions.</p> <p>7 A. Okay.</p> <p>8 Q. Now, in preparation for this deposition, did</p> <p>9 you read the deposition transcript or any part of it of</p> <p>10 Frank Waterhouse?</p> <p>11 A. I did not.</p> <p>12 Q. Did anyone provide you a synopsis or summary</p> <p>13 of it?</p> <p>14 A. Maybe a few bits and pieces, but...</p> <p>15 MR. RUKAVINA: Off the record for a second.</p> <p>16 (Off the record.)</p> <p>17 Q. (BY MR. RUKAVINA) What do you mean bits and</p> <p>18 pieces?</p> <p>19 A. I don't recall anything specific that was</p> <p>20 said, other than it was very long.</p> <p>21 Q. Did you talk to Frank Waterhouse about it?</p> <p>22 A. Did not.</p> <p>23 Q. Other than Highland's legal counsel, did you</p> <p>24 talk to anyone else about -- or -- strike that.</p> <p>25 Other than Highland's legal counsel, did you</p>
6	<p>1 KRISTIN HENDRIX,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 Q. (BY MR. RUKAVINA) Good morning. If you'll</p> <p>5 state your name.</p> <p>6 A. Kristin Hendrix.</p> <p>7 Q. We're doing this both ways. You're on the</p> <p>8 Zoom remotely and they can see you, but I would ask</p> <p>9 that you and I maintain eye contact. Of course, if</p> <p>10 someone is asking you on the Zoom, then maintain</p> <p>11 contact with them, if that's okay with you.</p> <p>12 A. Sure.</p> <p>13 Q. Have you been deposed before?</p> <p>14 A. No.</p> <p>15 Q. So I'm sure your counsel explained to you,</p> <p>16 but very quickly, you understand that you're testifying</p> <p>17 under oath and penalty of perjury as though you were in</p> <p>18 a court of law?</p> <p>19 A. Yes.</p> <p>20 Q. And you understand my job is to ask clear</p> <p>21 questions that you understand?</p> <p>22 A. Yes.</p> <p>23 Q. And if for whatever reason you don't</p> <p>24 understand my questions, please let me know or ask me</p> <p>25 to rephrase; otherwise, I'm going to assume that you</p>	8	<p>1 talk to anyone about Frank Waterhouse's deposition from</p> <p>2 last week?</p> <p>3 A. I did not.</p> <p>4 Q. Did you review -- strike that.</p> <p>5 Did you see any of the video of</p> <p>6 Mr. Waterhouse's deposition?</p> <p>7 A. Nope.</p> <p>8 Q. Same questions now for Mr. Seery, S-e-e-r-y.</p> <p>9 Did you read any portion or the whole of</p> <p>10 Mr. Seery's deposition from last week?</p> <p>11 A. I did not.</p> <p>12 Q. See any of the video?</p> <p>13 A. No.</p> <p>14 Q. Did you see any synopsis or summary of his</p> <p>15 deposition?</p> <p>16 A. No.</p> <p>17 Q. Did you talk to him about his deposition?</p> <p>18 A. I did not.</p> <p>19 Q. Other than talking to Highland's counsel, did</p> <p>20 you talk to anyone about Mr. Seery's deposition?</p> <p>21 A. No.</p> <p>22 Q. Other than talking to Highland's counsel, did</p> <p>23 you talk to anyone about your deposition today?</p> <p>24 A. Just John Morris and Dave Klos.</p> <p>25 Q. When did you talk to Mr. Klos, K-l-o-s?</p>

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9	<p>1 A. First time about this was last Friday. And</p> <p>2 then again Monday this week. And yesterday. And this</p> <p>3 morning.</p> <p>4 Q. Friday was there any lawyer present during</p> <p>5 your discussion with Mr. Klos?</p> <p>6 A. Yes, every time Mr. Morris was present.</p> <p>7 MR. RUKAVINA: Is it your position that those</p> <p>8 four discussions would be privileged, Counsel?</p> <p>9 MR. MORRIS: Yes.</p> <p>10 MR. RUKAVINA: Then we'll move on.</p> <p>11 Q. (BY MR. RUKAVINA) So we've established the</p> <p>12 four times you talked to Mr. Klos with counsel present.</p> <p>13 Did you do anything else related to or in preparation</p> <p>14 for today's deposition?</p> <p>15 A. Yes, probably went through and reviewed some</p> <p>16 emails, documentation that I may have had that I need</p> <p>17 to refresh memory on.</p> <p>18 Q. These documents and emails that you might</p> <p>19 have reviewed, did you supplementally provide them to</p> <p>20 counsel or anyone else?</p> <p>21 A. Yes.</p> <p>22 Q. This would have been in the last week or</p> <p>23 10 days?</p> <p>24 A. Yes.</p> <p>25 Q. Prior to the last week or 10 days, are you</p>	11
10	<p>1 aware that my office served requests for production on</p> <p>2 Highland?</p> <p>3 A. Yes.</p> <p>4 Q. And did you do anything prior to the last</p> <p>5 week or 10 days to try to search both your personal</p> <p>6 records and corporate records for any responsive</p> <p>7 documents?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Is that something that you understand legal</p> <p>10 counsel was charged with?</p> <p>11 A. Yes.</p> <p>12 Q. Let's go briefly now about your background,</p> <p>13 please.</p> <p>14 Where do you live?</p> <p>15 A. I live in Denton, Texas.</p> <p>16 Q. And what is your date of birth, please?</p> <p>17 A. January 26, 1982.</p> <p>18 Q. And walk me through your educational</p> <p>19 background, starting with any postsecondary, if any,</p> <p>20 schooling or college or anything like that.</p> <p>21 A. Sure. Graduated in 2004 from the University</p> <p>22 of North Texas with a degree in finance. Went on to</p> <p>23 get my MBA from SMU in 2009. And then went further and</p> <p>24 got my CPA license I believe in 2015.</p> <p>25 Q. In the state of Texas?</p>	12
9	<p>1 A. Yes.</p> <p>2 Q. And has your CPA license been current since</p> <p>3 then?</p> <p>4 A. Sure has.</p> <p>5 Q. Have you faced any kind of disciplinary</p> <p>6 action as a CPA?</p> <p>7 A. I have not.</p> <p>8 Q. Now, please walk me through your work</p> <p>9 history. Let's say starting with after you graduated</p> <p>10 college.</p> <p>11 A. Sure. December of 2005, which was shortly --</p> <p>12 sorry, 2004, shortly after I graduated from</p> <p>13 North Texas, I started at Highland. It was my first</p> <p>14 real job out of college. I have been there ever since,</p> <p>15 almost 17 years now.</p> <p>16 Have worked in the corporate accounting</p> <p>17 department the entire time. Started off as the AP</p> <p>18 associate, and worked my way up over the years and</p> <p>19 currently am the controller.</p> <p>20 Q. So even when you were getting your MBA and</p> <p>21 CPA you were employed by Highland?</p> <p>22 A. Yes.</p> <p>23 Q. Impressive. You're the controller today you</p> <p>24 mentioned?</p> <p>25 A. Yes.</p>	11
10	<p>1 Q. That's -- when did you become the controller,</p> <p>2 sometime February or March of this year?</p> <p>3 A. Yes.</p> <p>4 Q. Before you became the controller, what was</p> <p>5 your role at Highland?</p> <p>6 A. Right before that I was assistant controller.</p> <p>7 That was I believe April of 2020. Before that, the</p> <p>8 senior accounting manager, and I held that position for</p> <p>9 years.</p> <p>10 Q. So in May of 2019 would you have been the</p> <p>11 senior -- you said senior account?</p> <p>12 A. Senior accounting manager I believe was my</p> <p>13 title.</p> <p>14 Q. And would that have been your title in May of</p> <p>15 2017?</p> <p>16 A. Yes, I believe so.</p> <p>17 Q. And let's focus now on May 2019 as the senior</p> <p>18 accounting manager. How would you describe your role</p> <p>19 at Highland in May of 2019? What were your duties?</p> <p>20 A. Sure. I helped with treasury management</p> <p>21 function, cash forecasts and things like that. And</p> <p>22 oversaw the financial reporting from the last batch of</p> <p>23 AP to all the way to financials and reporting on</p> <p>24 audits.</p> <p>25 Q. Who did you report to in May of 2019?</p>	12

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13	<p>1 A. David Klos.</p> <p>2 Q. What was Mr. Klos' title to your</p> <p>3 understanding back then?</p> <p>4 A. I believe he was the controller.</p> <p>5 Q. And do you have an understanding as to who</p> <p>6 Mr. Klos reported to back then?</p> <p>7 A. Yes, Frank Waterhouse.</p> <p>8 Q. Frank Waterhouse. Who was he in May of 2019?</p> <p>9 A. The CFO.</p> <p>10 Q. Is Mr. Klos still with Highland today?</p> <p>11 A. He is.</p> <p>12 Q. What is his role now?</p> <p>13 A. He's now CFO.</p> <p>14 Q. You mentioned treasury management as of 2019,</p> <p>15 May. What do you mean by treasury management? What is</p> <p>16 that?</p> <p>17 A. Generally speaking, we -- it's not just me as</p> <p>18 one person. We have checks and balances.</p> <p>19 My team would be in charge of sending out</p> <p>20 payments, reconciling bank statements, making sure</p> <p>21 money is in the right accounts, creating cash forecasts</p> <p>22 and reporting on those every week with the CFO and</p> <p>23 oftentimes the CEO.</p> <p>24 Generally that's everything that fell under</p> <p>25 the umbrella.</p>	15	<p>1 A. Yes, you can say the debtor.</p> <p>2 Q. So when I say the debtor and you say the</p> <p>3 debtor we understand each other to mean Highland</p> <p>4 Capital Management, comma, LP; correct?</p> <p>5 A. Correct.</p> <p>6 Q. I apologize. In the December 2020 period, I</p> <p>7 would imagine that the debtor had its own -- that</p> <p>8 was -- strike that.</p> <p>9 We'll cut to the chase.</p> <p>10 In December of 2020, the debtor was providing</p> <p>11 services to various other entities affiliated with</p> <p>12 Mr. Dondero; correct?</p> <p>13 A. Correct.</p> <p>14 Q. That would have included NexPoint Advisors,</p> <p>15 LP?</p> <p>16 A. Correct.</p> <p>17 Q. And you're aware that NexPoint Advisors was</p> <p>18 the obligor on at least one promissory note to the</p> <p>19 debtor; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And did the debtor in December 2020 provide</p> <p>22 so-called treasury management services to NexPoint</p> <p>23 Advisors?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>
14	<p>1 Q. And would your description of treasury</p> <p>2 management be the same for the December 2020 period?</p> <p>3 A. Yes.</p> <p>4 Q. Who at Highland or which group at Highland in</p> <p>5 December of 2020 would have been responsible for noting</p> <p>6 that there are certain bills that need to be paid in</p> <p>7 the near or subsequent future.</p> <p>8 By way of, let's say, accounts payable or</p> <p>9 promissory notes or taxes or anything like that?</p> <p>10 A. Can you repeat your question.</p> <p>11 Q. Sure. So obviously, Highland was a pretty</p> <p>12 sophisticated business; correct?</p> <p>13 A. Yeah.</p> <p>14 MR. MORRIS: Objection to the form.</p> <p>15 Q. (BY MR. RUKAVINA) And had various accounts</p> <p>16 payable; right?</p> <p>17 A. Yes.</p> <p>18 Q. And it had maybe, let's just say, certain</p> <p>19 note obligations that it had to pay from time to time;</p> <p>20 correct?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question. Do you mean Highland Capital?</p> <p>23 MR. RUKAVINA: I mean Highland Capital</p> <p>24 Management; correct, I'm sorry. The debtor.</p> <p>25 Q. (BY MR. RUKAVINA) Can we say the debtor?</p>	16	<p>1 THE WITNESS: Yes.</p> <p>2 Q. (BY MR. RUKAVINA) As part of that, in</p> <p>3 December 2020, would it have been employees of the</p> <p>4 debtor that would have scheduled for potential payment,</p> <p>5 subject to approval by NexPoint, NexPoint's future</p> <p>6 obligations as they were coming due?</p> <p>7 A. Yes, we would have scheduled, only with</p> <p>8 approval.</p> <p>9 Q. And would that have included NexPoint's</p> <p>10 obligations on the promissory note to Highland?</p> <p>11 A. Yes.</p> <p>12 Q. Back to your background briefly.</p> <p>13 Do you have any legal training at all?</p> <p>14 A. I do not.</p> <p>15 Q. Do you have any courses, have you taken any</p> <p>16 courses in drafting promissory notes?</p> <p>17 A. No.</p> <p>18 Q. Do you believe that your expertise as a</p> <p>19 certified public accountant gives you any greater</p> <p>20 qualification than anyone else to prepare a promissory</p> <p>21 note?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: No.</p> <p>25 Q. (BY MR. RUKAVINA) Have you ever prepared or</p>

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17	<p>1 drafted a promissory note?</p> <p>2 A. That term is probably used loosely. I have</p> <p>3 not completely drafted a promissory note from scratch,</p> <p>4 no.</p> <p>5 Q. And we'll go into the details. Fair to say</p> <p>6 that you have taken a form promissory note and revised</p> <p>7 it?</p> <p>8 A. Absolutely.</p> <p>9 Q. Was this part of your job in May of 2019 at</p> <p>10 Highland?</p> <p>11 A. Yes.</p> <p>12 Q. Going back to the May 2019 time frame, were</p> <p>13 you part of a particular group at Highland, like</p> <p>14 accounting or legal or compliance?</p> <p>15 A. Yes, corporate accounting.</p> <p>16 Q. Corporate accounting. That's what you</p> <p>17 described before about treasury management and</p> <p>18 projections and forecasts?</p> <p>19 A. Yes.</p> <p>20 Q. In May of 2019, was it the practice at</p> <p>21 Highland that corporate accounting would be responsible</p> <p>22 for drafting intercompany promissory notes?</p> <p>23 A. Not necessarily drafting, but updating a</p> <p>24 draft that had been previously produced and provided by</p> <p>25 our legal team, yes.</p>	19	<p>1 Q. By updating, what do you mean?</p> <p>2 A. There's a few things that would need</p> <p>3 updating, the date.</p> <p>4 Q. Maker?</p> <p>5 A. Maker.</p> <p>6 Q. Amount?</p> <p>7 A. The dollar amount, the interest rate.</p> <p>8 Q. And is it your testimony that the corporate</p> <p>9 accounting group would do these things on its own</p> <p>10 without necessarily the involvement of the legal group?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: Generally, yes.</p> <p>14 Q. (BY MR. RUKAVINA) Do you have any memory in</p> <p>15 or before May of 2019 if the corporate -- I'm sorry, if</p> <p>16 the legal group became involved in drafting or</p> <p>17 executing any prior intercompany promissory notes?</p> <p>18 A. Yes.</p> <p>19 Q. Explain to me what you remember about that.</p> <p>20 A. I do know that they were involved with</p> <p>21 drafting restructured notes. So taking demand notes</p> <p>22 and turning them into a 30-year amort note.</p> <p>23 That was in 2017. I know for sure that they</p> <p>24 were involved in that because it was something</p> <p>25 different. We weren't just updating a demand note.</p>
18	<p>1 Q. And Highland in May -- the debtor in May of</p> <p>2 2019 did have a legal department?</p> <p>3 A. Yes.</p> <p>4 Q. Kind of like the corporate accounting, there</p> <p>5 was a separate legal department; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And who would have been in charge of that</p> <p>8 department in May of 2019?</p> <p>9 A. Scott Ellington, E-l-l-i-n-g-t-o-n.</p> <p>10 Q. In May of 2019 or by May of 2019 was there</p> <p>11 any practice at Highland as to whether its legal</p> <p>12 department would be involved with the drafting or</p> <p>13 execution of any intercompany promissory notes?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: It depends on the note.</p> <p>17 Q. (BY MR. RUKAVINA) What did it depend on?</p> <p>18 A. Our typical practice is if we have a loan</p> <p>19 with certain affiliates that it's a demand note. We</p> <p>20 have a template that we have used for years that was</p> <p>21 created by either our internal legal team or an outside</p> <p>22 law firm, I'm not sure which.</p> <p>23 The typical practice is always updating a few</p> <p>24 things on that template, getting it executed, and</p> <p>25 filing it in our audit folders.</p>	20	<p>1 Q. Is it your testimony that to the best of your</p> <p>2 recollection by May of 2019 and in May of 2019 it would</p> <p>3 have been the corporate accounting group that would</p> <p>4 have handled routine intercompany demand notes?</p> <p>5 A. Yes.</p> <p>6 Q. And you can think of more than one instance</p> <p>7 on which that happened?</p> <p>8 A. Yes.</p> <p>9 Q. And this is not a memory test, but going back</p> <p>10 in time can you try to give an estimate of what year</p> <p>11 that first started happening, that the corporate</p> <p>12 accounting would handle the drafting or execution of</p> <p>13 intercompany demand notes?</p> <p>14 A. As far as I can remember.</p> <p>15 Q. Is it your testimony that as -- maybe even</p> <p>16 going back as far as 2005 there were intercompany</p> <p>17 demand notes?</p> <p>18 A. Yes.</p> <p>19 Q. I don't know how to ask this question, but</p> <p>20 was this a significant thing in corporate accounting or</p> <p>21 just another routine deal when you handled demand</p> <p>22 notes?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: This is a routine job duty that</p>

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21	<p>1 we routinely did.</p> <p>2 Q. (BY MR. RUKAVINA) Between 2005 and 2019, do</p> <p>3 you remember any maker on these intercompany demand</p> <p>4 notes actually being required to pay a demand note, in</p> <p>5 other words, Highland making demand?</p> <p>6 A. Not that I can specifically recall.</p> <p>7 Q. Do you have any recollection as to what</p> <p>8 happened to these intercompany demand notes over the</p> <p>9 years between 2005 and 2019?</p> <p>10 A. Yeah. Typically anytime specifically Jim</p> <p>11 Dondero would need to move money between related</p> <p>12 parties, he would pay down -- when I say him, he would</p> <p>13 have us in corporate accounting move money around, pay</p> <p>14 off notes, reissue new notes somewhere else.</p> <p>15 So a way to move money around between his</p> <p>16 entities.</p> <p>17 Q. So let's use just hypotheticals here so that</p> <p>18 I'm not trying to pin you down to any specific fact.</p> <p>19 But between 2005 and 2019, is it fair to say</p> <p>20 that if some Dondero entity that's not the debtor</p> <p>21 needed money and the debtor had money, then Dondero</p> <p>22 would have the debtor lend money to that entity on a</p> <p>23 demand note basis?</p> <p>24 A. So long as they have the cash available to do</p> <p>25 so.</p>	23
22	<p>1 Q. "They" being the debtor?</p> <p>2 A. Debtor, yes.</p> <p>3 Q. And is it fair to say, then, again</p> <p>4 hypothetically without any specifics, that if the</p> <p>5 debtor maybe from time to time needed money and one of</p> <p>6 these other entities had cash, then Dondero would cause</p> <p>7 that other entity to pay down the demand note?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Can you repeat that.</p> <p>11 Q. (BY MR. RUKAVINA) Sure. So I think you</p> <p>12 mentioned that from time to time these entities would</p> <p>13 pay down these demand notes?</p> <p>14 A. To the debtor?</p> <p>15 Q. To the debtor.</p> <p>16 A. Yes.</p> <p>17 Q. And is that, hypothetically again, is that</p> <p>18 because on occasion the debtor might have needed cash</p> <p>19 and these entities had the cash, so Dondero would have</p> <p>20 them pay back the note?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: Yes, that could be a reason.</p> <p>24 Q. (BY MR. RUKAVINA) Can you think of any other</p> <p>25 reason in those 14 years?</p>	24
21	<p>1 A. If the debtor needed cash to lend to another</p> <p>2 entity.</p> <p>3 Q. I see. So again, it's all one big happy</p> <p>4 family, and whoever needed cash, the cash moved around;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Was it Mr. Dondero that basically was the</p> <p>8 only deciding person in each instance that you're aware</p> <p>9 of in those 14 years as to when a note would be made or</p> <p>10 repaid?</p> <p>11 A. I can't answer specifically to that. Most of</p> <p>12 my direction came from our CFO at the time,</p> <p>13 Frank Waterhouse. So what conversations he would have</p> <p>14 with Jim Dondero, I can't answer to that. But I would</p> <p>15 suspect so, yes.</p> <p>16 Q. And in May of 2019 or by May of 2019, did you</p> <p>17 communicate personally, by email or telephone, in</p> <p>18 person, periodically with Jim Dondero?</p> <p>19 A. I can't say periodically, no.</p> <p>20 Q. Well, I'm not trying to put words in your</p> <p>21 mouth. Is it fair to say that you kind of -- your</p> <p>22 communications stopped with Mr. Waterhouse and</p> <p>23 Waterhouse communicated with Dondero, as opposed to you</p> <p>24 regularly communicating with Dondero?</p> <p>25 A. That's typical, yes.</p>	23

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25	<p>1 Q. Was he patient and understanding as a boss?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Was he ever condescending or rude to</p> <p>4 anyone in your presence?</p> <p>5 A. No.</p> <p>6 Q. So you're the controller today at Highland,</p> <p>7 the debtor, the reorganized debtor; right?</p> <p>8 A. Yes.</p> <p>9 Q. And who do you report to? You mentioned</p> <p>10 Mr. Klos is the CFO?</p> <p>11 A. Yes.</p> <p>12 Q. And do you also report to Mr. Seery?</p> <p>13 A. Yes, I think everybody does.</p> <p>14 Q. And I don't need to know details, but I take</p> <p>15 it you're on a salary from reorganized Highland?</p> <p>16 A. Yes.</p> <p>17 Q. Is any part of your compensation merit or</p> <p>18 bonus based?</p> <p>19 A. It could potentially be.</p> <p>20 Q. Have you had any discussions with Mr. Seery</p> <p>21 or Mr. Klos about some sort of bonus compensation?</p> <p>22 A. Yes.</p> <p>23 Q. Has anything been agreed to?</p> <p>24 A. Yes.</p> <p>25 Q. And again, I don't need to know the exact</p>	27	<p>1 A. Correct.</p> <p>2 Q. And how Highland, reorganized Highland</p> <p>3 collects these promissory notes is going to play no</p> <p>4 part in your base and bonus compensation to your</p> <p>5 understanding; is that correct?</p> <p>6 A. To my knowledge, yes.</p> <p>7 Q. So you have no direct or indirect stake in</p> <p>8 the outcome of these litigations?</p> <p>9 A. No.</p> <p>10 Q. And you understand that I represent HCMFA and</p> <p>11 NexPoint?</p> <p>12 A. Yes.</p> <p>13 Q. And these court reporters are not familiar</p> <p>14 with some of our terminology. NAP [verbatim], if we</p> <p>15 say that, that means NexPoint; right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. You have to say yes or no.</p> <p>18 A. Yes, NPA, NexPoint.</p> <p>19 Q. NPA. And when we say NexPoint, you and I are</p> <p>20 meaning NexPoint Advisors, LP; right?</p> <p>21 A. Yes.</p> <p>22 Q. And when we say HCMFA, we're meaning Highland</p> <p>23 Capital Management Fund Advisors, LP, yes?</p> <p>24 A. Yes.</p> <p>25 Q. What is your understanding of the two</p>
26	<p>1 numbers. What would your bonus compensation consist</p> <p>2 of? How would it be decided?</p> <p>3 A. It's actually -- was decided when I agreed to</p> <p>4 stay on the Highland team back in February 2021, so</p> <p>5 it's in my employment agreement.</p> <p>6 Q. So what's your bonus compensation?</p> <p>7 A. I'm not sure I understand what you're asking.</p> <p>8 Q. So is the bonus discretionary on the part of</p> <p>9 Highland?</p> <p>10 A. No, it's a set amount.</p> <p>11 Q. And what triggers it or governs the set</p> <p>12 amount?</p> <p>13 A. Just it gets paid out on a certain date of</p> <p>14 the year. It's very straightforward, set out in my</p> <p>15 employment agreement.</p> <p>16 Q. Is it irrespective of the performance of the</p> <p>17 reorganized debtor?</p> <p>18 A. Yes.</p> <p>19 Q. So why do you call it a bonus instead of base</p> <p>20 compensation?</p> <p>21 A. That's what it's called in my agreement.</p> <p>22 Q. So your base compensation and your bonus,</p> <p>23 it's your testimony, you're going to earn it</p> <p>24 irrespective of whether reorganized Highland does good</p> <p>25 or bad with respect to its profitability?</p>	28	<p>1 lawsuits, the one against HCMFA and the one against</p> <p>2 NexPoint, that you're being deposed on today?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 Q. (BY MR. RUKAVINA) Who is suing who and for</p> <p>6 what?</p> <p>7 A. I don't know all the details.</p> <p>8 Q. So we've established that you've discussed</p> <p>9 these lawsuits in the last week or a little bit more</p> <p>10 with legal counsel. I don't want to talk about that.</p> <p>11 Prior to these recent discussions, did you</p> <p>12 have any discussions with anyone at Highland about its</p> <p>13 lawsuits against HCMFA and NexPoint on promissory</p> <p>14 notes?</p> <p>15 A. Repeat that again.</p> <p>16 Q. Sure. So remember we're excluding the recent</p> <p>17 discussions in the last week or 10 days with counsel;</p> <p>18 right?</p> <p>19 A. Okay.</p> <p>20 Q. Are you aware that in January of 2021 the</p> <p>21 debtor sued NexPoint to collect on a promissory note?</p> <p>22 A. I'm aware that demand notices were sent.</p> <p>23 Q. So until recently you weren't aware that a</p> <p>24 lawsuit had been filed?</p> <p>25 A. There's a lot of lawsuits filed. I can't</p>

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29	<p>1 keep track of what is what or what we're talking about</p> <p>2 at certain times.</p> <p>3 Q. But you have no distinct memory of that?</p> <p>4 A. Correct.</p> <p>5 Q. And same question for the lawsuit that the</p> <p>6 debtor filed against HCMFA in January.</p> <p>7 Do you have any specific memory of that</p> <p>8 lawsuit having been filed?</p> <p>9 A. Not specifically.</p> <p>10 Q. You mentioned that you're aware that on or</p> <p>11 before January 2021, demand letters had been sent?</p> <p>12 A. Yes.</p> <p>13 Q. Did you play any role in either drafting</p> <p>14 those demand letters or the decision to send them?</p> <p>15 A. No.</p> <p>16 Q. So going back to my question about these</p> <p>17 lawsuits, do you have any memory of anyone asking</p> <p>18 you -- again, excluding the last week or two.</p> <p>19 Do you have any memory of anyone asking you</p> <p>20 to do anything with respect to either or both of these</p> <p>21 lawsuits?</p> <p>22 A. No.</p> <p>23 Q. You have no memory of Mr. Waterhouse,</p> <p>24 Mr. Klos, Mr. Surgent, or Mr. Seery asking for any</p> <p>25 background information or your input at all on these</p>	31
30	<p>1 two lawsuits?</p> <p>2 MR. MORRIS: Better not have been --</p> <p>3 THE WITNESS: No.</p> <p>4 Q. (BY MR. RUKAVINA) Who did I say? Did I</p> <p>5 misspeak? Okay.</p> <p>6 Now we're going to have some exhibits here.</p> <p>7 And do you have the labels?</p> <p>8 Let's take a minute break off the record.</p> <p>9 (Off the record.)</p> <p>10 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to</p> <p>11 provide to you a promissory note in the original</p> <p>12 principal amount of \$5 million from HCMFA. This is the</p> <p>13 PDF version of this as filed with the Court for</p> <p>14 collection. It's going to be Exhibit 1.</p> <p>15 (Whereupon, Exhibit 1 was marked for</p> <p>16 identification.)</p> <p>17 Q. (BY MR. RUKAVINA) Before you look at</p> <p>18 Exhibit 1, I'm going to do the same thing for</p> <p>19 Exhibit 2, which is a promissory note from HCMFA for</p> <p>20 \$2.4 million, dated May 2, 2019.</p> <p>21 (Whereupon, Exhibit 2 was marked for</p> <p>22 identification.)</p> <p>23 Q. (BY MR. RUKAVINA) Again, Ms. Hendrix, these</p> <p>24 are the PDF versions of these notes as filed with the</p> <p>25 Court. Sitting here today, do you remember anything</p>	32
31	<p>1 about either or both of these two promissory notes?</p> <p>2 A. Sure, yes.</p> <p>3 Q. What do you remember?</p> <p>4 A. I remember seeing them because I've recently</p> <p>5 looked at them. I see them all the time in our loan</p> <p>6 tracking spreadsheets. My team would have been</p> <p>7 responsible for the whole process that I explained</p> <p>8 before when it comes to a promissory note.</p> <p>9 Q. And --</p> <p>10 MR. MORRIS: Are you finished?</p> <p>11 THE WITNESS: Yes.</p> <p>12 Q. (BY MR. RUKAVINA) And we have an email here</p> <p>13 that might give some more context to that if I can find</p> <p>14 it here.</p> <p>15 This will be Exhibit 3. This is an email</p> <p>16 from David Klos to corporate accounting dated May 2,</p> <p>17 2019.</p> <p>18 (Whereupon, Exhibit 3 was marked for</p> <p>19 identification.)</p> <p>20 Q. (BY MR. RUKAVINA) Do you see this email,</p> <p>21 ma'am?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Corporate accounting, would that email</p> <p>24 group have included you?</p> <p>25 A. Yes.</p>	32



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33	<p>1 would have related to Exhibit 1, the \$5 million                  2 promissory note?                  3 A. Yes. I believe there's another email for                  4 that one.                  5 Q. And do you believe that you provided that to                  6 counsel?                  7 A. Yes.                  8 Q. Recently or some time ago?                  9 A. Well, I don't think I provided it, so I'm not                  10 sure when they got it. I know it has been provided.                  11 Q. You know that it has?                  12 A. Uh-huh.                  13 Q. How do you know?                  14 A. Because I've seen it.                  15 Q. In the production that was produced to me?                  16 A. Yes.                  17 Q. And also from a David Klos?                  18 A. This one, or on the -- when I say this one,                  19 on the \$2.4 million or the 5-?                  20 Q. On the \$5 million note.                  21 A. I'm not sure.                  22 Q. Okay. Let me make sure I understand you                  23 correctly.                  24 Sitting here today you believe that there is                  25 another email referencing the \$5 million loan that has</p>	35	<p>1 the door, is typically how this works.                  2 Q. Is the answer generally the same for the                  3 \$5 million note?                  4 A. Yes.                  5 Q. So is it fair to say that typically,                  6 obviously not every time, but typically your corporate                  7 accounting group when it would see intercompany                  8 transfers in large amounts would believe that they were                  9 loans?                  10 MR. MORRIS: Objection to the form of the                  11 question.                  12 THE WITNESS: Typically they were loans.                  13 There's not really another way to get money from one                  14 entity to another. And if they were papered as a loan,                  15 that means we were told to set it up that way.                  16 Q. (BY MR. RUKAVINA) What do you mean papered                  17 as a loan? Aren't you papering it as a loan when                  18 someone makes the promissory note?                  19 A. Yes, because we're told by somebody to do                  20 that.                  21 Q. And in this instance, Mr. Klos on Exhibit 3                  22 told the group that this was a loan; right?                  23 A. Correct. But he would have spoken with                  24 Frank Waterhouse or Jim Dondero prior to that, before                  25 telling anybody to do that.</p>
34	<p>1 been produced to my office?                  2 A. Yes. I believe so.                  3 Q. Okay. And going off memory, did it kind of                  4 say the same thing as this Exhibit 3 except that it                  5 referenced \$5 million?                  6 MR. MORRIS: Objection to the form of the                  7 question.                  8 THE WITNESS: Generally, should have said the                  9 similar situation, yeah.                  10 Q. (BY MR. RUKAVINA) So Mr. Klos says, this is                  11 a new interco loan, for Exhibit 3. Other than what he                  12 told you, that this is an intercompany loan, did anyone                  13 else tell you or did you have any other information on                  14 May 2, 2019 that this was a loan?                  15 A. I don't specifically recall these                  16 conversations, but I can tell you our normal practice                  17 would be we would either likely be in a cash meeting --                  18 and I say "we." Would have been myself, Dave Klos,                  19 Frank Waterhouse, potentially even Jim Dondero.                  20 But I don't recall conversations on this                  21 specific date. But general practice is we would talk                  22 about it.                  23 Oftentimes, Frank would either call Dave or I                  24 or stop by and tell us that, we need to send money to                  25 an affiliate, paper up a new loan, let's get a wire out</p>	36	<p>1 Q. Okay. And do you have any knowledge that he                  2 did speak to Mr. Waterhouse or Mr. Dondero before                  3 sending this email?                  4 A. Again, I don't have specific knowledge on the                  5 exact conversations, but that's always how it has                  6 worked.                  7 Q. That's how it was for 14 or 15 years;                  8 correct?                  9 A. Yes.                  10 Q. But you're logically assuming that it                  11 happened here. You don't know that it happened here;                  12 correct?                  13 MR. MORRIS: Objection to the form of the                  14 question.                  15 THE WITNESS: I would have to be fairly                  16 certain that it did, even though I can't recall                  17 specific conversations.                  18 Q. (BY MR. RUKAVINA) Did you ask Mr. Klos about                  19 who told him that this is a new intercompany loan on                  20 Exhibit 3?                  21 A. No. It's quite possible I was involved in                  22 the conversation. I reported to him. I wouldn't                  23 question his authority.                  24 Q. Did you ask Mr. Klos who told him that the                  25 \$5 million deal was also an intercompany loan?</p>

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37	<p>1 A. I did not ask that specific question that I</p> <p>2 can recall.</p> <p>3 Q. Did you ask Mr. Waterhouse whether either of</p> <p>4 these transactions were loans?</p> <p>5 A. I'm sure Mr. Waterhouse is the one that told</p> <p>6 us they were loans. We wouldn't just paper up a loan,</p> <p>7 send money out and call it a loan and account for it</p> <p>8 that way, unless somebody specifically told us.</p> <p>9 Q. Do you have any memory of Mr. Waterhouse</p> <p>10 orally or in writing or email or in any way, shape, or</p> <p>11 form on or about May 2 or 3, 2019 telling you that the</p> <p>12 2.4 million or \$5 million transfers were intercompany</p> <p>13 loans?</p> <p>14 A. No specific knowledge of exact conversations,</p> <p>15 but I'm certain that those conversations were had</p> <p>16 because that's the only way that we would have papered</p> <p>17 up a loan, sent money out as a loan, had them on our</p> <p>18 financials for two years.</p> <p>19 Q. So you're saying that this email, Exhibit 3,</p> <p>20 from Mr. Klos was not enough, that there would have</p> <p>21 been other things that happened to make you and other</p> <p>22 people in your group confident that these were loans?</p> <p>23 A. Yes.</p> <p>24 Q. And these other things would have been in</p> <p>25 person or by email?</p>	39	<p>1 a consent fee that the advisor of the Global Allocation</p> <p>2 Fund had promised to pay to shareholders of that fund,</p> <p>3 and it was in the amount of \$5 million roughly.</p> <p>4 So both of these loans were for those</p> <p>5 purposes respectfully.</p> <p>6 Q. And were you in May of 2019 also aware that</p> <p>7 in addition to the \$2.4 million, there was another more</p> <p>8 than \$5 million paid to that fund by HCMFA's insurer as</p> <p>9 compensation for the NAV error?</p> <p>10 A. By the insurance company, yes.</p> <p>11 Q. So the \$7.4 million, you understood then was</p> <p>12 a loan as opposed to compensation to HCMFA?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did you understand in May of 2019 that</p> <p>15 it had been the debtor and its valuation team that</p> <p>16 caused that NAV error?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I can't answer that. I was not</p> <p>20 involved with the activities leading up to the NAV</p> <p>21 error.</p> <p>22 Q. (BY MR. RUKAVINA) How do you know that the</p> <p>23 \$7.4 million were being transferred for the NAV error</p> <p>24 and consent fee?</p> <p>25 A. Because I do know about both of those</p>
38	<p>1 A. Most likely in person via phone call.</p> <p>2 Q. Okay. So again, you have no specific memory</p> <p>3 of it, but based on the 14-year pattern and conduct you</p> <p>4 believe that you would have discussed these two</p> <p>5 transfers with Mr. Waterhouse and he would have told</p> <p>6 you these are loans?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: Correct.</p> <p>10 Q. (BY MR. RUKAVINA) And then would he have</p> <p>11 told you to take care of the promissory notes, or was</p> <p>12 that Mr. Klos here in Exhibit 3?</p> <p>13 A. It could have been both. It's clearly Dave</p> <p>14 in this email, but Frank could have also said that to</p> <p>15 me.</p> <p>16 Q. Now, do you -- strike that.</p> <p>17 In May of 2019, did you know or were you told</p> <p>18 why these \$7.4 million were being transferred from the</p> <p>19 debtor to HCMFA?</p> <p>20 A. Yes. I do have recollection that -- I do</p> <p>21 know that there were two big events in May 2019.</p> <p>22 2.4 million was related to a TerreStar NAV error, with</p> <p>23 one of the funds advised by HCMFA. That's Global</p> <p>24 Allocation Fund.</p> <p>25 Similar with the \$5 million loan. There was</p>	40	<p>1 instances and I do know that HCMFA needed to pay these</p> <p>2 dollar amounts for both of those.</p> <p>3 Q. And you knew that in May of 2019?</p> <p>4 A. Yes.</p> <p>5 Q. How did you know that in May of 2019?</p> <p>6 A. It was lots of discussions had been going on</p> <p>7 around both of these issues for months. These weren't</p> <p>8 surprises to anybody.</p> <p>9 Q. So although you weren't involved directly</p> <p>10 with the NAV error issues, it was more or less common</p> <p>11 knowledge in your accounting group?</p> <p>12 A. Correct.</p> <p>13 Q. Do you have any knowledge at all as to</p> <p>14 whether Mr. Dondero decided to transfer these</p> <p>15 \$7.4 million not as a loan, but to compensate HCMFA for</p> <p>16 the debtor's alleged liability?</p> <p>17 A. Have not heard of that.</p> <p>18 Q. Ever?</p> <p>19 A. Never.</p> <p>20 Q. But you also never heard Mr. Dondero say that</p> <p>21 these \$7.4 million were a loan; correct?</p> <p>22 A. That was not told to me directly.</p> <p>23 Q. Again, you're logically assuming that based</p> <p>24 on many instances of intercompany transfers in the</p> <p>25 14 years prior to that?</p>

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41	<p>1 MR. MORRIS: Objection to the form of the</p> <p>2 question. Mischaracterizes the testimony.</p> <p>3 THE WITNESS: Correct.</p> <p>4 Q. (BY MR. RUKAVINA) I think you answered</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you mentioned that after these notes, you</p> <p>8 saw them on internal financials and that reinforces</p> <p>9 your view that these were loans?</p> <p>10 A. Correct.</p> <p>11 Q. But as of May 2 and 3, 2019, no one had told</p> <p>12 you directly that these are loans?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question. It's in writing.</p> <p>15 THE WITNESS: That's not what I'm saying at</p> <p>16 all.</p> <p>17 Q. (BY MR. RUKAVINA) Other than Mr. Klos' email</p> <p>18 or emails, no one told you on May 2 or May 3, 2019 that</p> <p>19 you remember today that these were loans?</p> <p>20 A. It quite possibly could have been told to me</p> <p>21 in addition to this email.</p> <p>22 Q. I understand. You just have no memory of</p> <p>23 that today; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Is there anything that you can think of</p>	43	<p>1 answers don't count and I'm in trouble.</p> <p>2 6 will be the \$5 million note, and 7 will be</p> <p>3 the \$2.4 million note.</p> <p>4 (Whereupon, Exhibits 6 &amp; 7 were marked for</p> <p>5 identification.)</p> <p>6 Q. (BY MR. RUKAVINA) Okay. So Exhibit 4 and 5</p> <p>7 are the Word documents. Do you have any memory of you</p> <p>8 doing anything with respect to these two Word</p> <p>9 documents?</p> <p>10 A. I don't have specific memory, but generally</p> <p>11 speaking, it was my job to update promissory note</p> <p>12 templates and create promissory notes.</p> <p>13 Q. So do you believe that -- we discussed</p> <p>14 earlier that your group would have used a template and</p> <p>15 that it would have made changes reflecting the maker,</p> <p>16 amount, date, interest rate.</p> <p>17 Do you believe you were the one with respect</p> <p>18 to 4 and 5 that updated that template to create 4</p> <p>19 and 5?</p> <p>20 A. I'm sure that I was, yes.</p> <p>21 Q. Well, Exhibit 6 -- do you know what metadata</p> <p>22 is?</p> <p>23 A. Sort of.</p> <p>24 Q. What's your understanding of what metadata</p> <p>25 is?</p>
42	<p>1 sitting here today to refresh your memory on that</p> <p>2 point?</p> <p>3 A. I do not think so. I'm sure there was</p> <p>4 conversation that unfortunately would not be in an</p> <p>5 email.</p> <p>6 Q. Now, we have the Word documents, the Word</p> <p>7 version of these two promissory notes, and you're going</p> <p>8 to have rely on me that I printed these out as</p> <p>9 Mr. Morris sent to me. If I'm misleading you on that,</p> <p>10 then I'm in trouble and your answers don't count.</p> <p>11 So please assume that I didn't doctor these</p> <p>12 and that I printed them out as they were prepared to</p> <p>13 me; okay?</p> <p>14 A. Yes.</p> <p>15 Q. So Exhibit 4 will be the \$5 million note and</p> <p>16 Exhibit 5 will be the 2.4 million.</p> <p>17 (Whereupon, Exhibits 4 &amp; 5 were marked for</p> <p>18 identification.)</p> <p>19 Q. (BY MR. RUKAVINA) Before I ask about 4 and</p> <p>20 5, to be fair to you and refresh your memory, I'm going</p> <p>21 to provide you printouts of the metadata, metadata --</p> <p>22 I'm not sure how to better say that -- for both notes.</p> <p>23 And again I'm representing to you that I</p> <p>24 printed out the metadata without doctoring it, so</p> <p>25 please assume that's true, and if it's not, your</p>	44	<p>1 A. Just in context from speaking on it recently,</p> <p>2 it's going to tell you who made changes to the</p> <p>3 documents, is what I would assume.</p> <p>4 MR. RUKAVINA: Go off the record for one</p> <p>5 second.</p> <p>6 (Off the record.)</p> <p>7 Q. (BY MR. RUKAVINA) So a little bit of error</p> <p>8 on my part. We'll have some more metadata, but we can</p> <p>9 still talk about 6 and 7.</p> <p>10 It says the author JFORSHEE, J-F-O-R-S-H-E-E.</p> <p>11 Do you recall or do you know who that person was?</p> <p>12 A. I recognize the name, and it makes sense.</p> <p>13 This says Strasburger is the company. I think he was</p> <p>14 one of the lawyers that we had used at some point in</p> <p>15 time.</p> <p>16 Q. Strasburger is a law firm?</p> <p>17 A. Yes.</p> <p>18 Q. And then it says, so Exhibit 6 created May 3,</p> <p>19 Exhibit 7 created May 2, modified, accessed. Does that</p> <p>20 to the best of your understanding comport with when</p> <p>21 Exhibits 4 and 5 were actually created?</p> <p>22 A. Can you repeat that.</p> <p>23 Q. Yeah. We'll wait for the rest of the</p> <p>24 metadata. But let's go back to 4 and 5.</p> <p>25 In and by May 2019 I think you mentioned that</p>

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45	<p>1 it was your job to, I think you said update promissory 2 notes? 3 MR. MORRIS: Objection to the form of the 4 question. 5 Q. (BY MR. RUKAVINA) Let me take that question 6 back. 7 You testified earlier that your group would 8 have taken a template and used it to create or prepare 9 a new promissory note; right? 10 A. Right. 11 Q. How would you call that process? What word 12 would you use for that process? 13 A. Let's call it papering the loan. 14 Q. In May of 2019, was it your job to paper the 15 loan? 16 A. Yes. 17 Q. Would anyone else at the corporate accounting 18 group have been responsible to paper a loan? 19 A. At that time, I don't think so. I think I 20 was the one doing it. 21 Q. I think you mentioned that you think you 22 papered the loan, respecting Exhibits 4 and 5; correct? 23 A. Correct. 24 Q. You have no distinct present memory of 25 papering 4 and 5; correct?</p>	47	<p>1 that Mr. Waterhouse's signature there appears on the 2 Word document as an image. 3 A. Uh-huh. 4 Q. Do you have any memory of whether there was 5 an image that someone would have affixed of 6 Mr. Waterhouse's signature to promissory notes? 7 A. Yes. We typically always -- he was 8 completely fine with having documentations -- sorry, 9 having documents signed or executed with his 10 e-signature. 11 Q. Would these pictures of his signature have 12 been his e-signature in May of 2019? 13 A. Yes. 14 Q. So let's just clarify that because I don't 15 want there to be any confusion. 16 I know there's some computer programs out 17 there that are restrictive and have passwords before 18 any signature is printed. And then there's some people 19 that use a stamp or an image; right? 20 MR. MORRIS: Objection to the form of the 21 question. 22 Q. (BY MR. RUKAVINA) Are you following me? 23 A. I follow you. 24 Q. In May of 2019, did Mr. Waterhouse have any 25 specific program that would have to -- you would have</p>
46	<p>1 A. Correct. 2 Q. Can you think of anyone else at the corporate 3 accounting group that would have papered 4 and 5? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: The only other person that 7 could have would either be Dave Klos or Hayley Eliason. 8 Q. (BY MR. RUKAVINA) What was Hayley's role in 9 May of 2019? 10 A. She was the accountant. I can't recall her 11 specific title. 12 Q. Now, in May of 2019 when you papered a loan, 13 would you have consulted with either internal or 14 external legal before finishing that loan or presenting 15 it for signature or anything else? 16 A. Not if it was just our standard demand note 17 that we already had a template on. 18 Q. So would it have been your general course in 19 May of 2019, if you prepared Exhibits 4 and 5, not to 20 seek advice from internal or legal before proceeding 21 with these notes? 22 A. With these two specific notes? 23 Q. Yes. 24 A. Yes. 25 Q. If we flip the page, I'll represent to you</p>	48	<p>1 to go through before it would spit out his e-signature, 2 or was he fine with you and his staff using an image 3 like this? 4 A. He was fine with using his e-signature, and 5 what is on these documents was that exact e-signature. 6 So I don't know if he had -- I don't know how it was 7 created originally. 8 Q. The e-signature? 9 A. E-signature. 10 Q. Do you have any memory with respect to 11 Exhibits 4 and 5 of getting Mr. Waterhouse's specific 12 approval to use his e-signature? 13 A. I don't have exact specific memory, same as 14 conversations on these loans. But he would have had to 15 approve this loan in the dollar amount, the day. 16 He would have been the one directing us to 17 create these loans. In past practice he has always 18 approved using his e-signature to execute documents. 19 Q. How would he have approved Exhibits 4 and 5? 20 By that, I mean by email or memorandum? How would he 21 have approved it in May of 2019? 22 MR. MORRIS: Objection to the form of the 23 question. 24 THE WITNESS: I would assume that, as I've 25 stated previously, these directions were coming</p>

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49	<p>1 directly from him to paper a loan. These changes that                  2 are made are only to the dollar amount. Interest rate                  3 is pulled right off the IRS website.                  4 That is his approval to paper a loan and in                  5 fact execute or approve the loan.                  6 <b>Q. (BY MR. RUKAVINA) In May of 2019, would</b>                  7 <b>Mr. Waterhouse -- what was his practice as far as using</b>                  8 <b>an ink signature on documents as opposed to an</b>                  9 <b>e-signature? Did he have a practice?</b>                  10 <b>MR. MORRIS:</b> Objection to the form of the                  11 question.                  12 <b>THE WITNESS:</b> He has never specifically said,                  13 on certain documents I would like to ink it with my                  14 signature. Probably at this time, 99 percent of the                  15 stuff my team got his signature on was his e-signature.                  16 I think it just depended on the group and what it was.                  17 <b>Q. (BY MR. RUKAVINA) So how would he authorize</b>                  18 <b>you or your team to use his e-signature for any given</b>                  19 <b>document in May of 2019?</b>                  20 <b>MR. MORRIS:</b> Objection to the form of the                  21 question.                  22 <b>THE WITNESS:</b> Through the conversations that                  23 would have been had before these emails went out saying                  24 paper loan.                  25 <b>Q. (BY MR. RUKAVINA) And -- okay. So, and</b></p>	51	
50	<p>1 <b>after his e-signature was used either on these notes or</b>                  2 <b>other documents in May of 2019, would you have brought</b>                  3 <b>the documents back to him for any kind of verification?</b>                  4 <b>MR. MORRIS:</b> Objection to the form of the                  5 question.                  6 <b>THE WITNESS:</b> Probably not. These are all                  7 very standard. We've papered hundreds of loans. So I                  8 think he trusted that we can handle updating a date and                  9 a dollar amount on these loan templates.                  10 <b>Q. (BY MR. RUKAVINA) Do you know or believe, or</b>                  11 <b>your recent review of documents, did it reveal an email</b>                  12 <b>from Mr. Waterhouse to you specifically authorizing his</b>                  13 <b>e-signature on Exhibits 4 and/or 5?</b>                  14 <b>A. Not that I recall seeing, no.</b>                  15 <b>Q. Sitting here today, do you have any memory of</b>                  16 <b>Mr. Waterhouse orally or otherwise specifically</b>                  17 <b>authorizing you to affix his e-signature to Exhibits 4</b>                  18 <b>and/or 5?</b>                  19 <b>A. Specifically on these loans, no, I don't</b>                  20 <b>recall those conversations. But, again, our practice</b>                  21 <b>has always been we have this discussion, he's under the</b>                  22 <b>understanding that we're going to paper the loans, he's</b>                  23 <b>always comfortable with using his e-signature.</b>                  24 <b>This is not something me or my team would</b>                  25 <b>have done without that authority and approval from him.</b></p>	<p>1 <b>Q. But you have no memory of that authority or</b>                  2 <b>approval, specifically for 4 and 5?</b>                  3 <b>MR. MORRIS:</b> Objection. Asked and answered                  4 about five times.                  5 <b>THE WITNESS:</b> Same as my answer I just gave.                  6 <b>Q. (BY MR. RUKAVINA) And I think you mentioned</b>                  7 <b>that in your years at Highland your team papered</b>                  8 <b>hundreds of loans?</b>                  9 <b>A. Yeah.</b>                  10 <b>Q. In your time at Highland, is it your</b>                  11 <b>testimony that the accounting -- corporate accounting</b>                  12 <b>department never made a mistake with respect to</b>                  13 <b>anything that it did?</b>                  14 <b>MR. MORRIS:</b> Objection to the form of the                  15 question.                  16 <b>THE WITNESS:</b> No, I did not say that.                  17 <b>Q. (BY MR. RUKAVINA) Do you recall any mistakes</b>                  18 <b>in your time at the corporate accounting group at</b>                  19 <b>Highland that had been made, any significant mistakes?</b>                  20 <b>MR. MORRIS:</b> Objection to the form of the                  21 question.                  22 <b>THE WITNESS:</b> Significant mistakes, not that                  23 I can recall.                  24 <b>Q. (BY MR. RUKAVINA) No accounts payable</b>                  25 <b>mistakenly paid?</b></p>	52

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53	<p>1 promissory notes. I can't tell you explicitly which                  2 ones.                  3 (Off the record.)                  4 Q. (BY MR. RUKAVINA) Are you saying that in May                  5 of 2019 -- strike that.                  6 By May of 2019, was it not the standard                  7 practice at the debtor that Mr. Dondero would sign                  8 intercompany promissory notes?                  9 MR. MORRIS: Objection to the form of the                  10 question.                  11 THE WITNESS: No, that's not standard                  12 practice. Just needed to be somebody -- somebody who                  13 is a signer for the entity on the incumbency                  14 certificate.                  15 Q. (BY MR. RUKAVINA) Was there a standard                  16 practice, or did you just describe the standard                  17 practice that it was someone on the incumbency                  18 certificate?                  19 A. That's correct, somebody on the incumbency                  20 certificate. Frank is a great prospect to sign, with                  21 giving direction to set loans up, send money out. Why                  22 wouldn't he sign it.                  23 Q. Do you have any memory sitting here today of                  24 Mr. Waterhouse telling you or agreeing that he would be                  25 signing these two promissory notes for HCMFA?</p>	55
54	<p>1 A. Not specifically, but he didn't need to tell                  2 me. He typically would tell me if he wanted Jim to                  3 sign them.                  4 Q. Sitting here today, do you have any memory of                  5 giving Mr. Waterhouse these two promissory notes after                  6 they were prepared?                  7 A. I specifically don't remember walking into                  8 his office and providing it to him, but he could have                  9 found it on our shared drive if he wanted to.                  10 Q. Do you have any memory or in your recent                  11 review of documents did you see any email to the effect                  12 of you sending either or both of these promissory notes                  13 to Mr. Waterhouse after they were papered up?                  14 A. I don't have any specific recollection,                  15 again, but he had access to look at them.                  16 Q. On the shared drive?                  17 A. Yes.                  18 Q. In May -- I'm going to ask this question                  19 multiple different ways, so let's start with kind of                  20 the general.                  21 In May or by May of 2019, was there a                  22 repository, electronic or paper, where the debtor kept                  23 original promissory notes that were owed -- where money                  24 was owed to it?                  25 A. Original meaning paper?</p>	56
53	<p>1 Q. Well, let's go back a little bit in time.                  2 Would you agree that at some point prior to                  3 2019 the standard course was that paper notes were ink                  4 signed?                  5 MR. MORRIS: Objection to the form of the                  6 question.                  7 THE WITNESS: I could not tell you                  8 specifically when notes were or were not ink signed.                  9 Q. (BY MR. RUKAVINA) Was there any repository,                  10 to the best of your recollection, as of May 2019 where                  11 any ink-signed original promissory notes were kept by                  12 the debtor?                  13 A. No. We always would scan them in, save them                  14 on our shared drive. Never had paper copies.                  15 Q. So that's -- fixing to ask that question                  16 next.                  17 So Exhibits 4 and 5, would they even have                  18 been printed after they were papered up?                  19 MR. MORRIS: Objection to the form of the                  20 question.                  21 THE WITNESS: Possibly. Somebody could have                  22 printed them.                  23 Q. (BY MR. RUKAVINA) Do you remember printing                  24 Exhibits 4 or 5 sitting here today?                  25 A. I don't recall printing them myself, no.</p>	56

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57	<p>1 identification.)</p> <p>2 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to</p> <p>3 represent to you again that my office has faithfully</p> <p>4 printed this metadata out without doctoring or changing</p> <p>5 anything, and I ask you to assume that. If I'm wrong</p> <p>6 on that, then your answers don't count.</p> <p>7 Ma'am, as I look at these two documents, it</p> <p>8 says last modified by Kristin Hendrix.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And that would have -- that could have only</p> <p>12 been you; correct, in that department?</p> <p>13 A. I hope so, yes.</p> <p>14 Q. Seeing these two documents, can you agree</p> <p>15 with me now that it was in fact you that papered up</p> <p>16 Exhibits 4 and 5?</p> <p>17 MR. MORRIS: Objection. Asked and answered.</p> <p>18 THE WITNESS: I would assume so since my name</p> <p>19 is on it, yes.</p> <p>20 Q. (BY MR. RUKAVINA) Both of these documents</p> <p>21 say last printed -- I'm sorry. If you see related</p> <p>22 dates, it says last printed May 2, 2019, 11:27 A.M. Do</p> <p>23 you have any memory or any understanding as to why that</p> <p>24 date would be there or what last printed might mean?</p> <p>25 A. I don't know why it says last printed the day</p>	59	<p>1 Obviously, you're welcome to use them anytime you need</p> <p>2 to, but I think we're done with those notes.</p> <p>3 Going to hand you what we're going to mark as</p> <p>4 Exhibit 10, which is an email chain produced by the</p> <p>5 debtor.</p> <p>6 And I don't know how anyone on the video will</p> <p>7 see it. I apologize. I'll have to send it to you</p> <p>8 later.</p> <p>9 (Whereupon, Exhibit 10 was marked for</p> <p>10 identification.)</p> <p>11 Q. (BY MR. RUKAVINA) Now, if you start with</p> <p>12 this email chain, it starts on November 19, 2020 from</p> <p>13 Jack Donohue to you, copying Mr. Seery and various</p> <p>14 others.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And Mr. Donohue is asking you to provide him</p> <p>18 the financial records of HCMFA due to the funds owed</p> <p>19 the debtor.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall that email from Mr. Donohue to</p> <p>23 you?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall any context or subsequent</p>
58	<p>1 before it was created. That doesn't make any sense. I</p> <p>2 have no idea.</p> <p>3 Unless, the only thing I could think of is if</p> <p>4 we changed this template. When I say "this," the</p> <p>5 \$2.4 million loan, which was papered on the 2nd, and</p> <p>6 then used it for the next day for the template to</p> <p>7 update the date, possibly. I have no idea.</p> <p>8 Q. Well, it may be -- and I understand that you</p> <p>9 don't have any memory; we're speculating a little bit.</p> <p>10 It may be, looking at Exhibits 8 and 9, that</p> <p>11 the \$2.4 million note was printed on May 2, and then</p> <p>12 after having been used as the template for the</p> <p>13 \$5 million note, the \$5 million note would not have</p> <p>14 been printed.</p> <p>15 Does that sound possible?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: Sure, it could be possible.</p> <p>19 Q. (BY MR. RUKAVINA) But you don't have any</p> <p>20 memory either way?</p> <p>21 A. No. And when these were printed they're</p> <p>22 printed to PDF, I believe, is probably what that means.</p> <p>23 Q. Okay.</p> <p>24 We're going to switch gears a little bit now,</p> <p>25 if you want to make a pile of those exhibits.</p>	60	<p>1 discussions or how that email came to be, or do you</p> <p>2 just recall getting that email?</p> <p>3 A. I just recall getting the email.</p> <p>4 Q. You write back, hi Jack, Scott Ellington is</p> <p>5 going to follow up with the board on this request.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall why you told Jack that</p> <p>9 Mr. Ellington was going to follow up?</p> <p>10 A. From what I recall, I had asked Frank</p> <p>11 Waterhouse if it was okay to send these financials</p> <p>12 over, and he wanted me to check with Scott Ellington</p> <p>13 and that was Scott's response.</p> <p>14 Q. And did he tell you why he wanted you to</p> <p>15 check with Scott Ellington?</p> <p>16 A. Just to make sure that there were no issues</p> <p>17 with sending them over.</p> <p>18 Q. Mr. Seery writes back, can I get this ASAP.</p> <p>19 HCMFA is way overdue.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And Mr. Seery writes again, it's about a week</p> <p>23 later, and he says, this is an explicit direction from</p> <p>24 me as CEO of HCMLP. But it looks like you are the</p> <p>25 recipient of that December 2 email; correct?</p>

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61	<p>1 A. Yes.</p> <p>2 Q. Do you remember him sending you that email</p> <p>3 and copying those people?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember anything happening in that</p> <p>6 week between his November 25 and December 2 email along</p> <p>7 the same discussion lines?</p> <p>8 A. I don't remember anything. I think I was</p> <p>9 probably left out of any discussions, and if there were</p> <p>10 any, it was with Scott Ellington and whomever he had</p> <p>11 discussions with.</p> <p>12 Q. Then subsequent, on December 2, Mr. Seery</p> <p>13 writes, all, Scott and I have spoken and agree that the</p> <p>14 information should be provided to James immediately.</p> <p>15 Would that have been James Romey, do you</p> <p>16 think?</p> <p>17 A. Yes.</p> <p>18 Q. And who was James Romey?</p> <p>19 A. He also worked for DSI.</p> <p>20 Q. And then he writes, Kristin, please proceed</p> <p>21 with James. If anyone has any questions or issues,</p> <p>22 please call me.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Did you proceed with James Romey?</p>	63
62	<p>1 A. I further made sure that Scott was okay, to</p> <p>2 confirm. He said yes, please do, and I did send them</p> <p>3 to James Romey.</p> <p>4 Q. So Mr. Seery has some of it in this email</p> <p>5 chain, but do you have any understanding as to why</p> <p>6 either DSI or Mr. Seery in November of 2020 was asking</p> <p>7 for the financial records of HCMFA?</p> <p>8 A. I do not, other than what's in this email.</p> <p>9 Q. Did you discuss with either DSI or Mr. Seery</p> <p>10 or Mr. Waterhouse in November or December 2020 whether</p> <p>11 the demand notes from HCMFA should be demanded, should</p> <p>12 be called?</p> <p>13 A. I did not have discussions.</p> <p>14 Q. Next exhibit is Exhibit 11. This is another</p> <p>15 email chain.</p> <p>16 And I apologize to the folks on the video.</p> <p>17 I'll have to get it to you during some break.</p> <p>18 MR. MORRIS: Hold on one second.</p> <p>19 MR. RUKAVINA: Sure. Off the record.</p> <p>20 (Off the record.)</p> <p>21 (Whereupon, Exhibit 11 was marked for</p> <p>22 identification.)</p> <p>23 Q. (BY MR. RUKAVINA) Exhibit 11, Ms. Hendrix,</p> <p>24 if you'll go to the beginning of this email chain, is</p> <p>25 an email on January 6, 2021, again from Mr. Donohue to</p>	64
61	<p>1 you, copying Waterhouse, Seery, a bunch of others.</p> <p>2 Where he says, at the direction of Jim Seery,</p> <p>3 please provide DSI with the requested information for</p> <p>4 each entity below.</p> <p>5 And you'll see the entity includes both of my</p> <p>6 clients, NexPoint Advisors and HCMFA. And the</p> <p>7 information includes bank statements, income</p> <p>8 statements, balance sheets, cash flows.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall this email?</p> <p>12 A. Vaguely, yes.</p> <p>13 Q. Did you have any concerns when you received</p> <p>14 this email?</p> <p>15 A. Concerns about the email, no. I probably</p> <p>16 checked with -- I would have checked with Frank to make</p> <p>17 sure it was okay to send this first.</p> <p>18 Q. Frank Waterhouse?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any understanding as to why</p> <p>21 Mr. Donohue requested bank statements, income</p> <p>22 statements, balance sheets for NexPoint and/or HCMFA?</p> <p>23 A. I do not.</p> <p>24 Q. Did he or anyone at DSI tell you why they</p> <p>25 were requesting that?</p>	63
62	<p>1 A. Not that I can recall.</p> <p>2 Q. If we go forward in time, you'll see that</p> <p>3 Mr. Waterhouse is writing back to Mr. Donohue. And</p> <p>4 then Mr. Seery interjects and says, these are HCMLP</p> <p>5 business records. Please provide them as requested by</p> <p>6 Jack ASAP.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it looks like you were not privy to</p> <p>10 subsequent communications where Frank and Jim were</p> <p>11 talking back and forth about this. You were not privy</p> <p>12 to those, like you weren't blind copied or anything to</p> <p>13 your recollection?</p> <p>14 A. No.</p> <p>15 Q. Did you in fact on or after January 6, 2021,</p> <p>16 provide Mr. Donohue or anyone on his team the</p> <p>17 information that he had requested as it relates to</p> <p>18 NexPoint and/or HCMFA?</p> <p>19 A. Without going back to check, I couldn't</p> <p>20 answer yes or no for certain.</p> <p>21 Q. So I think you mentioned when you received</p> <p>22 the email from Mr. Donohue you would have checked with</p> <p>23 Frank. And what do you remember asking Frank or</p> <p>24 checking with him about?</p> <p>25 A. I don't remember asking him specifically. In</p>	64



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65	<p>1 fact, it's possible that Frank just responded on his                  2 own here to Jack. Again, would have been a                  3 conversation that I can't specifically recall.                  4 Q. Sure. And you don't specifically remember                  5 today providing Mr. Donohue any of that information;                  6 right?                  7 A. Right.                  8 Q. You don't specifically remember today having                  9 a discussion with Mr. Donohue or Seery or anyone else                  10 at or about that time as to why they were wanting this                  11 information?                  12 A. Correct.                  13 Q. Exhibit 12, Ms. Hendrix, is going to be the                  14 December 3, 2020, letter by which Highland called the                  15 notes.                  16 MR. MORRIS: Objection to the form of the                  17 question if there was one.                  18 (Whereupon, Exhibit 12 was marked for                  19 identification.)                  20 Q. (BY MR. RUKAVINA) Are you familiar with                  21 Exhibit 12, Ms. Hendrix?                  22 A. No, I haven't seen this.                  23 Q. Prior to today, you don't remember seeing                  24 this?                  25 A. No.</p>	67
66	<p>1 Q. I think you're answering no?                  2 A. No, sorry, no.                  3 Q. On or before December 3, 2020, did anyone                  4 discuss with you whether Highland should call the                  5 demand notes that were outstanding by HCMFA?                  6 A. No.                  7 Q. Do you recall in December 2020 any discussion                  8 with anyone at the debtor about the NexPoint                  9 \$30.7 million term note?                  10 A. Repeat your question again, please.                  11 Q. Sure. So you're familiar, and we'll talk                  12 about it in some detail, with the NexPoint                  13 \$30.7 million note?                  14 A. Yes.                  15 Q. And again, we'll talk about it, but at that                  16 point in time that was a term note; correct?                  17 A. Correct.                  18 Q. Do you remember in the December 2020 or                  19 November 2020 time frame discussing with anyone at the                  20 debtor the status of that NexPoint note?                  21 A. Yes, we would have discussed this on a weekly                  22 basis in our cash meetings that we would have had, as                  23 identifying that there are payments due on these loans                  24 in December.                  25 Q. What weekly cash meetings are you referring</p>	68
65	<p>1 to?                  2 A. We had a standing weekly cash meeting with                  3 Frank Waterhouse, myself, Jim Seery. I can't recall                  4 everyone on it. Some of the DSI folks. We go through                  5 cash forecasts. It's a 13-week cash forecast. We go                  6 through it every week.                  7 It's going to lay out incoming and outgoing                  8 payments that are forecasted, of which these term loans                  9 were in those forecasts, so they were discussed.                  10 Q. And Mr. Morris produced some of those to me                  11 this morning. I haven't had time to go through them.                  12 But it is your recollection in November and                  13 December of 2020 the fact of the NexPoint term note                  14 being out there was known to Mr. Seery?                  15 A. Yes.                  16 Q. And the fact of an upcoming December 31,                  17 2020, payment was known to Mr. Seery?                  18 A. Yes.                  19 Q. So with that background, in November and                  20 December of 2020, do you remember discussing with                  21 anyone anything to the effect of, oh, it really would                  22 be better if NexPoint defaulted on that note so we                  23 could call it?                  24 A. No.                  25 Q. Did Mr. Seery ever state to you anything in</p>	67
66	<p>1 November or December of 2020 about how the debtor might                  2 monetize that NexPoint note?                  3 A. No.                  4 Q. Did he discuss with you any potential sale of                  5 that promissory note?                  6 A. No.                  7 Q. Did DSI ever discuss with you in November or                  8 December 2020 any potential sale of that note?                  9 A. No.                  10 Q. Or how to monetize that note?                  11 A. No.                  12 Q. So -- well, strike that.                  13 Did Mr. Seery or anyone at DSI, or anyone at                  14 all, in November or December of 2020 state any words to                  15 you to the effect that they were hoping that NexPoint                  16 would default on that note?                  17 A. Never.                  18 Q. Or that it would be in the debtor's interest                  19 for NexPoint to default on that note?                  20 A. No.                  21 Q. In November or December of 2020, do you                  22 recall having any discussions with Mr. Seery or anyone                  23 at DSI as to the collectibility of that note? And by                  24 that I mean whether NexPoint can pay the note?                  25 A. I don't specifically recall. It most likely</p>	68

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69	<p>1 came up in cash conversations.</p> <p>2 Q. I think you were assistant controller back</p> <p>3 then?</p> <p>4 A. Yes.</p> <p>5 Q. Would a discussion of a borrower's ability to</p> <p>6 repay have been something within your general sphere of</p> <p>7 responsibility in that time frame?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: It depends on who the borrower</p> <p>11 is, and at that time we did -- we had knowledge over</p> <p>12 that information, so yes.</p> <p>13 Q. (BY MR. RUKAVINA) Well, you've seen some</p> <p>14 instructions or requests from Mr. Seery to you and DSI</p> <p>15 to you for financial information of NexPoint and HCMFA.</p> <p>16 We've gone through those documents; right?</p> <p>17 A. Yes.</p> <p>18 Q. Does that refresh your memory that there was</p> <p>19 any internal discussion that you were privy to about</p> <p>20 the ability of HCMFA and/or NexPoint to pay these</p> <p>21 notes?</p> <p>22 A. I don't recall that specifically being asked.</p> <p>23 It could have.</p> <p>24 Q. Did you ever at any point in time have any</p> <p>25 employment or officer or any title or role with</p>	71	<p>1 not?</p> <p>2 A. Yes.</p> <p>3 Q. What's your understanding?</p> <p>4 A. Either November 30 or December 1, 2020, I</p> <p>5 received a phone call from Frank Waterhouse that said,</p> <p>6 no payments are going from any of the Advisors to</p> <p>7 Highland.</p> <p>8 Q. Can you be more specific with what he said?</p> <p>9 A. That's what he said.</p> <p>10 Q. So he said no payments from the Advisors to</p> <p>11 Highland?</p> <p>12 A. Yes.</p> <p>13 Q. Did he reference the promissory note</p> <p>14 expressly?</p> <p>15 A. No.</p> <p>16 Q. But no payments means?</p> <p>17 A. Nothing.</p> <p>18 Q. That would logically in your mind include the</p> <p>19 promissory note?</p> <p>20 A. Yes.</p> <p>21 Q. Did you ask him why?</p> <p>22 A. No.</p> <p>23 Q. Did he tell you why?</p> <p>24 A. No.</p> <p>25 Q. Did you, prior to January 1, 2021, did you</p>
70	<p>1 NexPoint Advisors, LP?</p> <p>2 A. No.</p> <p>3 Q. Were you ever the controller or assistant</p> <p>4 controller for NexPoint Advisors LP?</p> <p>5 A. No.</p> <p>6 Q. Did you ever at any point in time have any</p> <p>7 employment, officer or any title or role at HCMFA?</p> <p>8 A. No.</p> <p>9 Q. Were you ever the controller or assistant</p> <p>10 controller of HCMFA?</p> <p>11 A. No.</p> <p>12 Q. So you might have indirectly provided</p> <p>13 services to those two as part of shared services, but</p> <p>14 never directly; is that fair?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: When you say never directly,</p> <p>18 meaning I was not employed by those entities?</p> <p>19 Q. (BY MR. RUKAVINA) Correct.</p> <p>20 A. That's correct.</p> <p>21 Q. Do you have any understanding -- first of</p> <p>22 all, NexPoint did not make a payment on December 31,</p> <p>23 2020; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Do you have any understanding of why</p>	72	<p>1 hear from anyone as to why Mr. Waterhouse gave that</p> <p>2 instruction?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you, after that November 30 or December 1</p> <p>5 phone call, did you follow up with him or anyone else</p> <p>6 about the upcoming note payment?</p> <p>7 A. I didn't have any reason to.</p> <p>8 Q. I'm going to -- let me find you a document</p> <p>9 for a moment.</p> <p>10 Just so the record is complete, let's include</p> <p>11 this promissory note. It's going to be Exhibit 13.</p> <p>12 This is the NexPoint promissory note.</p> <p>13 (Whereupon, Exhibit 13 was marked for</p> <p>14 identification.)</p> <p>15 Q. (BY MR. RUKAVINA) I take it you've seen this</p> <p>16 promissory note, Exhibit 13?</p> <p>17 A. Yes.</p> <p>18 Q. And I think you testified about this before,</p> <p>19 but just to summarize to save time.</p> <p>20 This would have been a note that you would</p> <p>21 not have papered but would have gone through legal</p> <p>22 because it was a roll-up. Is that generally accurate?</p> <p>23 A. Yes.</p> <p>24 Q. And do you have any memory at all of having</p> <p>25 anything to do with papering up this loan?</p>

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73	<p>1 A. Not that I recall.</p> <p>2 Q. Would you have had, after 2017 and before</p> <p>3 2021, any role with respect to any payments or upcoming</p> <p>4 payments on this note, any role at all?</p> <p>5 A. Yes.</p> <p>6 Q. What would have been your role or roles?</p> <p>7 A. That would have been taking direction from</p> <p>8 Frank Waterhouse or possibly Jim Dondero saying, go</p> <p>9 ahead and make these payments that are due on these</p> <p>10 term notes.</p> <p>11 Q. Would you have recorded on any books or</p> <p>12 records payments that actually were made?</p> <p>13 A. Not me personally.</p> <p>14 Q. Who would have?</p> <p>15 A. Our accountant, which could have been one of</p> <p>16 two different people, depending on the time frame.</p> <p>17 Q. Would you have had any role with respect to</p> <p>18 recording those payments or is that just something that</p> <p>19 your group would have done?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: I would not have had a role.</p> <p>23 My group would have.</p> <p>24 Q. (BY MR. RUKAVINA) What about calculating</p> <p>25 amortization and/or interest payments that are due or</p>	75	<p>1 A. At my house.</p> <p>2 Q. Did you answer on a cell phone or landline?</p> <p>3 A. My cell phone.</p> <p>4 Q. Is there any chance in hell that your cell</p> <p>5 phone would still have a record of that phone call,</p> <p>6 like what time it was and how long it lasted?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 Q. (BY MR. RUKAVINA) I apologize for using</p> <p>10 hell.</p> <p>11 MR. MORRIS: And to foundation.</p> <p>12 THE WITNESS: I have no idea.</p> <p>13 Q. (BY MR. RUKAVINA) Do you have your cell</p> <p>14 phone with you right now?</p> <p>15 A. In the other room.</p> <p>16 Q. I might ask you during the break to just --</p> <p>17 we'll take a short break before I'm done, and I'll ask</p> <p>18 you if you've had a chance to look for November and</p> <p>19 December 2020 phone logs between you and</p> <p>20 Mr. Waterhouse. I would ask you to do that, please.</p> <p>21 A. Sure.</p> <p>22 Q. And I apologize, I think you said you thought</p> <p>23 it was a short telephone call?</p> <p>24 A. I have no idea.</p> <p>25 Q. Did the telephone call or Mr. Waterhouse's</p>
74	<p>1 upcoming? Who would have done that, you or someone</p> <p>2 else?</p> <p>3 A. Our accountant.</p> <p>4 Q. Do you have any memory of doing that?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Not during 2017 through 2019.</p> <p>8 Q. (BY MR. RUKAVINA) What about 2020?</p> <p>9 A. No.</p> <p>10 Q. Going back to that November 30 or December 1</p> <p>11 telephone call, do you recall who initiated the call?</p> <p>12 A. To me?</p> <p>13 Q. The one between you and Mr. Waterhouse.</p> <p>14 A. Frank called me.</p> <p>15 Q. Frank called you.</p> <p>16 And was it just to discuss -- or just to give</p> <p>17 you that instruction, no payments from the Advisors, or</p> <p>18 was there other things discussed?</p> <p>19 A. I could not tell you if something else was</p> <p>20 discussed on that phone call.</p> <p>21 Q. Do you remember if it was a long phone call</p> <p>22 or short?</p> <p>23 A. Couldn't tell you.</p> <p>24 Q. Do you remember where you were when he called</p> <p>25 you?</p>	76	<p>1 instructions surprise you in any way?</p> <p>2 A. Nothing surprises me anymore, so no.</p> <p>3 Q. Did it surprise you back in November or</p> <p>4 December of 2020?</p> <p>5 A. No.</p> <p>6 Q. Did it pique your curiosity?</p> <p>7 A. Nope.</p> <p>8 Q. Just another instruction from your boss?</p> <p>9 A. Yep.</p> <p>10 Q. Exhibit 14 is going to be a document that</p> <p>11 we're not sure what it is and we're not sure who</p> <p>12 prepared it. It appears to be a ledger of charges</p> <p>13 against and payments on this promissory note.</p> <p>14 I'm just saying that so the people on the</p> <p>15 phone know what it is, but you don't have to take what</p> <p>16 I said as correct.</p> <p>17 (Whereupon, Exhibit 14 was marked for</p> <p>18 identification.)</p> <p>19 Q. (BY MR. RUKAVINA) So Ms. Hendrix, Exhibit 14</p> <p>20 was produced by the debtor. And I'm going to ask you,</p> <p>21 do you know what this is or have you seen it before?</p> <p>22 Can you help us state what it is?</p> <p>23 A. This looks like it is an amortization</p> <p>24 schedule of the NexPoint Advisors term loan.</p> <p>25 Q. Would this have been something that it</p>

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77	<p>1 appears to you would have been maintained internally by</p> <p>2 the debtor, or does it look like it might have been</p> <p>3 prepared by DSI or someone else for some other reason?</p> <p>4 A. It looks like the debtor's amortization</p> <p>5 schedule that they kept.</p> <p>6 Q. Did the debtor keep an amortization schedule</p> <p>7 for the NexPoint promissory note, to your knowledge?</p> <p>8 A. Yes.</p> <p>9 Q. Did the debtor keep amortization schedules</p> <p>10 for other term promissory notes?</p> <p>11 A. Yes.</p> <p>12 Q. In what format, like Excel spreadsheets or</p> <p>13 Word documents? What is your recollection for NexPoint</p> <p>14 specifically?</p> <p>15 A. Excel.</p> <p>16 Q. Would that have been on the shared system or</p> <p>17 something?</p> <p>18 A. Yes.</p> <p>19 Q. And who would have been responsible on an</p> <p>20 ongoing basis to update the NexPoint amortization</p> <p>21 schedule?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: Depends on what time you're</p> <p>25 asking.</p>
78	<p>1 Q. (BY MR. RUKAVINA) Let's talk about the year</p> <p>2 of 2020.</p> <p>3 A. That would have been Hayley Eliason, our</p> <p>4 accountant at that time.</p> <p>5 Q. What about the year 2019?</p> <p>6 A. Still Hayley.</p> <p>7 MR. RUKAVINA: I'm going to just ask, to</p> <p>8 preserve the record, Mr. Morris, if he hasn't already,</p> <p>9 to produce any such Excel spreadsheet in the native</p> <p>10 form.</p> <p>11 Q. (BY MR. RUKAVINA) If we look at this,</p> <p>12 Ms. Hendrix -- and I'm a little confused as to what</p> <p>13 these entries mean. Maybe you could help me. But</p> <p>14 columns that say interest paid, principal paid, total</p> <p>15 paid, do you know what those columns mean?</p> <p>16 A. Exactly as they state. These are interest</p> <p>17 and principal payments made on the date that's listed,</p> <p>18 and then you've got a total.</p> <p>19 Q. And then they're in brackets because they're</p> <p>20 negative numbers?</p> <p>21 A. Correct.</p> <p>22 Q. So here's what I'm not understanding. Go to</p> <p>23 the second page.</p> <p>24 You see there's an entry under interest paid</p> <p>25 12/30/29 [verbatim] that says negative 530,000 and</p>
79	<p>1 change but it doesn't use brackets?</p> <p>2 A. It's a negative number. It's just a</p> <p>3 formatting issue.</p> <p>4 Q. What about also on that same page in the</p> <p>5 other column, principal paid, 5/31/2020, it's a</p> <p>6 positive number, 575,550.</p> <p>7 MR. MORRIS: Where are you?</p> <p>8 MR. RUKAVINA: On page 2 of this exhibit.</p> <p>9 MR. MORRIS: What date?</p> <p>10 MR. RUKAVINA: May 31, 2020. And it's the</p> <p>11 column over, principal paid. It's a positive number,</p> <p>12 575,000 and change.</p> <p>13 MR. MORRIS: Got it, thank you.</p> <p>14 Q. (BY MR. RUKAVINA) Do you see that,</p> <p>15 Ms. Hendrix?</p> <p>16 A. Yes.</p> <p>17 Q. Do you have an understanding of why that</p> <p>18 number would be positive?</p> <p>19 A. Actually, I think this looks like an entry to</p> <p>20 me where the interest is what we call picking. So on</p> <p>21 the anniversary date of this loan, which is May, from</p> <p>22 what I can tell, the accrued interest total, which is</p> <p>23 that 575-, is being rolled into principal.</p> <p>24 That's what I can tell from looking at it.</p> <p>25 Q. Okay. Do you have any understanding as to</p>
80	<p>1 why that would have been done or why that would have</p> <p>2 been done on that day?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Because that's the anniversary</p> <p>6 date of the loan. I would assume that that's how the</p> <p>7 loan is written.</p> <p>8 Q. (BY MR. RUKAVINA) And I think that that</p> <p>9 Section 1 of the promissory note does say, the unpaid</p> <p>10 principal balance of this note from time to time</p> <p>11 outstanding shall bear interest.</p> <p>12 At the rate of 6 percent per annum from the</p> <p>13 date hereof until maturity date, compounded annually on</p> <p>14 the anniversary of the date of this note.</p> <p>15 Do you see that?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: Yeah, I see that.</p> <p>19 Q. (BY MR. RUKAVINA) Assuming that this is the</p> <p>20 correct amortization schedule for the NexPoint note,</p> <p>21 and that the numbers in here are correct, if you look</p> <p>22 at the second page under the column total paid there</p> <p>23 are a number of entries for 2019.</p> <p>24 Do you see that, the far right column?</p> <p>25 A. At the top, yes.</p>

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81	<p>1 Q. For example, 1.3 million, 2.1 million, 2 1.3 million. 3 Do you see that? 4 A. Yes. 5 Q. Assuming that that's correct, do you have any 6 memory or understanding whether in the year 2019, or 7 why NexPoint was making these payments on this 8 promissory note? 9 A. Without going back and reading through emails 10 I can only assume that, from looking at this, Highland, 11 the debtor, would have needed cash, and so this is one 12 way of getting cash to the debtor. 13 Q. This is kind of like what we discussed in the 14 beginning, that Mr. Dondero on a cash needed basis 15 would just transfer money between entities? 16 A. Yes. 17 Q. Do you have any memory in the first half of 18 2019 whether Highland, the debtor, had any particular 19 need for cash money at that time? 20 A. We generally always had a need for cash, so 21 yes. 22 Q. And so if NexPoint was transferring money 23 back to Highland on this note because Highland needed 24 the money, would those have been recorded as 25 payments by the debtor?</p>	83	<p>1 Exhibit 15 and I'm going to represent to you that it's 2 the email that Mr. Morris sent to me today and I've not 3 doctored it in any way. 4 (Whereupon, Exhibit 15 was marked for 5 identification.) 6 MR. MORRIS: Do you have the email that it 7 was attached to? 8 MR. RUKAVINA: Somewhere. I can find it at a 9 break. 10 MR. MORRIS: I'll let the witness testify. 11 This was attached to an email. Not my email, but 12 another email. But I'll let the witness testify. 13 MR. RUKAVINA: Off the record. 14 (Off the record.) 15 Q. (BY MR. RUKAVINA) So you have Exhibit 15. 16 And during the break we established, I don't 17 have a copy of it right now, but you sent Exhibit 15 on 18 August 29, 2020, to Mr. Dondero by email, copying 19 Mr. Waterhouse, as well as a couple of other 20 attachments; is that correct? 21 A. Correct. 22 Q. Do you recall what prompted you to send that 23 email and this attachment? 24 A. Yes. 25 Q. What?</p>
82	<p>1 MR. MORRIS: Objection to the form of the 2 question. 3 THE WITNESS: Yes. 4 Q. (BY MR. RUKAVINA) Sitting here today, do you 5 have any reason to believe based on the formatting or 6 anything on Exhibit 14 that it's not the amortization 7 schedule as it was maintained by the debtor? 8 A. I don't have any reason to not believe that 9 it was. 10 Q. Going to show you a few documents that I'm 11 hopefully going to burn through, but you're certainly 12 entitled to take all the time that you need. 13 So first is going to be a document that 14 Mr. Morris produced this morning. It's not Bates 15 labeled. I don't know why. 16 MR. MORRIS: As I said in my email, my 17 paralegal is sick and so I wanted you to have the 18 documents. We'll Bates stamp them later, but we have a 19 written record from my email of what we produced to 20 you. 21 MR. RUKAVINA: You're assuming that I read my 22 emails. 23 MR. MORRIS: Sorry about that. I confess, 24 sometimes I don't as well. 25 Q. (BY MR. RUKAVINA) So I'm going to hand you</p>	84	<p>1 A. Frank Waterhouse called me on August 29, and 2 requested that I do so. 3 Q. Did he tell you why? 4 A. From what I recall, this was a time when Jim 5 was trying to come up with his bargain or pop land, 6 whatever he referenced it as. This was all information 7 that Frank said he wanted. 8 Q. Okay. So going back to Exhibit 15, what I'm 9 interested in is NexPoint Advisors, the 23,846,000 and 10 change number. 11 Do you see that? 12 A. Yes. 13 Q. Where did that number -- or where did this 14 Exhibit 15 come from, if you understand my question? 15 A. Sure. These numbers should all be balances 16 off of the corresponding notes that each entity owed to 17 the debtor. 18 Q. Did you or someone prepare Exhibit 15 19 specifically for that email? Or was Exhibit 15 already 20 existing somewhere on the system? 21 A. I believe that we prepared it specifically 22 for this request. 23 Q. Do you recall who? 24 A. It was either myself or our accountant. I 25 don't recall who put it together.</p>

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1 Q. Okay. And where would that 23 million and  
 2 change number for NexPoint have come from, an  
 3 amortization schedule?  
 4 A. Yes.  
 5 Q. And what about Highland Capital Management  
 6 Fund Advisors? You see \$10.5 million and change demand  
 7 on Exhibit 15?  
 8 A. Yes.  
 9 Q. Where would that \$10.5 million number have  
 10 come from, do you remember?  
 11 A. The same. It would have come off of the  
 12 amortization schedules for all of their notes.  
 13 Q. How was there an amortization schedule for a  
 14 demand note?  
 15 A. Because it's accruing interest.  
 16 Q. So sitting here today, you expect there would  
 17 be some amortization schedule like Exhibit 14 but for  
 18 HCMFA?  
 19 A. Yes.  
 20 Q. Now we're going to have an exhibit [verbatim]  
 21 chain that's going to be marked as Exhibit 16.  
 22 (Whereupon, Exhibit 16 was marked for  
 23 identification.)  
 24 MR. RUKAVINA: For the folks on the video,  
 25 Exhibit 16 is the email chain that Mr. Morris used last

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1 week regarding the Section 15(c) document.  
 2 Q. (BY MR. RUKAVINA) Are you familiar with this  
 3 Exhibit 16 email chain, Ms. Hendrix?  
 4 A. Yes.  
 5 Q. Why are you familiar with it?  
 6 A. Well, I'm copied on it, and I saw it  
 7 yesterday.  
 8 Q. Do you have any memory -- well, that's a  
 9 stupid question. But prior to yesterday, did you have  
 10 any memory of this?  
 11 A. Yes.  
 12 Q. And do you recall the context or the purpose  
 13 of this exhibit, or this email chain?  
 14 A. From what I remember this is the time where  
 15 information was being prepared for the retail board to  
 16 re-up the debtor's shared services.  
 17 Q. So, here -- you're certainly welcome to read  
 18 it in its entirety and if you feel like you want to or  
 19 need to, that's fine. But I only have one question.  
 20 Well, one question with two subparts.  
 21 I'm looking at Ms. Lauren Thedford's,  
 22 T-h-e-d-f-o-r-d's, email October 6, 2000 [verbatim]  
 23 where she says, I see the below from the 6/30  
 24 financials. NPA, due to HCMLP and affiliates as of  
 25 June 30, 2020.

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1 Do you see that, ma'am?  
 2 A. Yes.  
 3 Q. 23 million 683?  
 4 A. Yes.  
 5 Q. And you see, HCMFA due to HCMLP as of  
 6 June 30, 2020, 12,286,000?  
 7 MR. MORRIS: Objection to the form of the  
 8 question.  
 9 Q. (BY MR. RUKAVINA) Strike that.  
 10 It says 12,286. What do you take that 12,286  
 11 to mean?  
 12 A. I think that's a typo and it should have  
 13 said -- well, there's several things wrong with this,  
 14 from looking at it.  
 15 She left off three zeros on the end of it.  
 16 Should have said 12,286,000. Secondly, that amount is  
 17 our due to affiliates on HCMFA's books, not just due to  
 18 HCMLP.  
 19 Q. That was going to be my question, why that  
 20 12,286,000 number didn't jive with the 10,530,000  
 21 number on Exhibit 15?  
 22 A. Yes, there's another loan due to a different  
 23 affiliate.  
 24 Q. So that \$12,286,000 amount doesn't mean that  
 25 it's all due to Highland; is that correct?

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1 A. Correct.  
 2 Q. Exhibit 17 is going to be the January 7, 2021  
 3 notice from the debtor to NexPoint about the default.  
 4 (Whereupon, Exhibit 17 was marked for  
 5 identification.)  
 6 Q. (BY MR. RUKAVINA) You've been handed  
 7 Exhibit 17. Have you seen this document before?  
 8 A. Not that I believe.  
 9 Q. And I think we've asked this before, but just  
 10 to clarify.  
 11 Did anyone at the debtor, including Mr. Seery  
 12 or DSI, discuss with you after December 31, 2020 that  
 13 the payment had not been made and what, if anything,  
 14 the debtor should do about that?  
 15 MR. MORRIS: Objection to the form of the  
 16 question.  
 17 THE WITNESS: I can't recall specific  
 18 conversations that may or may not have been had around  
 19 that topic.  
 20 Q. (BY MR. RUKAVINA) Would -- so back then you  
 21 were the assistant controller, on January 7; right?  
 22 A. Yes.  
 23 Q. Do you think that back then Mr. Seery or DSI  
 24 would have sought your advice or input as to what they  
 25 should do about the missed payment?

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89	<p>1 A. No.</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: No.</p> <p>5 Q. (BY MR. RUKAVINA) That would have been</p> <p>6 outside of your purview?</p> <p>7 A. Yes.</p> <p>8 Q. And you see in this notice in the middle, it</p> <p>9 says an amount due as of January 8 in the \$24,471,000</p> <p>10 range.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any idea, I take it you don't,</p> <p>14 where that number came from?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I don't know who provided that</p> <p>18 number or where it came from.</p> <p>19 Q. (BY MR. RUKAVINA) Do you have any</p> <p>20 understanding as to why that number is higher than the</p> <p>21 number on Exhibit 15?</p> <p>22 A. My guess would be that Exhibit 15 is just</p> <p>23 principal balances.</p> <p>24 Q. Okay.</p> <p>25 Exhibit 18, please.</p>	91
90	<p>1 (Whereupon, Exhibit 18 was marked for</p> <p>2 identification.)</p> <p>3 Q. (BY MR. RUKAVINA) Exhibit 18, Ms. Hendrix,</p> <p>4 is an email chain between you and Mr. Waterhouse on</p> <p>5 January 12, 2021. Do you remember this email chain?</p> <p>6 A. No.</p> <p>7 Q. Do you remember on January 12 Mr. Waterhouse</p> <p>8 emailing you, asking when the last amort payment due</p> <p>9 and what the amount was for NexPoint?</p> <p>10 A. No.</p> <p>11 Q. When was the last time -- well, strike that.</p> <p>12 Do you remember ever seeing this email</p> <p>13 between then and today?</p> <p>14 A. No.</p> <p>15 Q. Do you have any present memory of any</p> <p>16 communications with Mr. Waterhouse on or about</p> <p>17 January 12, 2021 regarding the NexPoint default or</p> <p>18 note?</p> <p>19 A. Not specific, no.</p> <p>20 Q. Any general memory?</p> <p>21 A. Not that I can pinpoint, no.</p> <p>22 Q. Were you aware that on or about January 14</p> <p>23 NexPoint transferred about \$1.4 million and change to</p> <p>24 the debtor?</p> <p>25 A. Yes.</p>	92
91	<p>1 Q. Were you aware of it then?</p> <p>2 A. Was I aware of what?</p> <p>3 Q. That transfer of \$1.4 million and change.</p> <p>4 A. On January 14?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. Did you facilitate that transfer?</p> <p>8 A. Yes.</p> <p>9 Q. Who told you to make that transfer?</p> <p>10 A. Frank Waterhouse.</p> <p>11 Q. Did he tell you why?</p> <p>12 A. Nope.</p> <p>13 Q. He just said make the transfer?</p> <p>14 A. Yes.</p> <p>15 Q. Did he tell you that it was on account of the</p> <p>16 NexPoint note?</p> <p>17 A. Yes.</p> <p>18 Q. Did he tell you how to, if at all, to credit</p> <p>19 that note for that amount?</p> <p>20 A. No.</p> <p>21 Q. Sitting here today, you have no memory other</p> <p>22 than that Frank Waterhouse told you to transfer some</p> <p>23 \$1.4 million on the NexPoint note?</p> <p>24 A. Right.</p> <p>25 Q. And do you recall, was that oral or written</p>	92

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93	<p>1 A. I have no idea.</p> <p>2 Q. He didn't ask what this was for or anything</p> <p>3 like that?</p> <p>4 A. He may have asked what the amount</p> <p>5 represented. I can't specifically recall. But it's</p> <p>6 possible.</p> <p>7 Q. Okay. Do you recall any discussion about</p> <p>8 that time, January 14, with Mr. Donohue or</p> <p>9 Mr. Waterhouse or anyone as to whether that payment</p> <p>10 would in any way relieve NexPoint of the default or</p> <p>11 would not relieve NexPoint of the default?</p> <p>12 A. No.</p> <p>13 Q. Ms. Hendrix, I believe that I am done. I</p> <p>14 would like you, however, because it's important, to</p> <p>15 check your phone. Would you like a short, five-minute</p> <p>16 restroom break and just check --</p> <p>17 A. Yeah, and I might need help figuring out how</p> <p>18 to do that.</p> <p>19 Q. I'm not saying that it's possible, but I'm</p> <p>20 going to ask you on the record to look for that</p> <p>21 November 30 or December 1, 2020 phone call.</p> <p>22 MR. MORRIS: We're happy to do that.</p> <p>23 Q. (BY MR. RUKAVINA) But what I would like if</p> <p>24 you find it, I would like you to tell me the time, the</p> <p>25 date and the length of that call.</p>	95
94	<p>1 A. Okay.</p> <p>2 Q. Thank you.</p> <p>3 We'll be back in five minutes.</p> <p>4 (Off the record.)</p> <p>5 Q. (BY MR. RUKAVINA) Ms. Hendrix, during the</p> <p>6 break did you look at your phone?</p> <p>7 A. I did.</p> <p>8 Q. Did you find anything?</p> <p>9 A. Sadly, it only goes back to October 5 of</p> <p>10 2021.</p> <p>11 Q. Not surprised. Thank you.</p> <p>12 Have I been courteous to you today?</p> <p>13 A. Yes.</p> <p>14 MR. RUKAVINA: I pass the witness.</p> <p>15 MR. MORRIS: Thank you.</p> <p>16 MR. AIGEN: Are we ready to move forward?</p> <p>17 MR. MORRIS: Yes. You're a little dark</p> <p>18 there.</p> <p>19 MR. RUKAVINA: Can we increase the volume on</p> <p>20 that thing?</p> <p>21 (Off the record.)</p> <p>22 EXAMINATION</p> <p>23 Q. (BY MR. AIGEN) Good afternoon, Ms. Hendrix.</p> <p>24 My name is Michael Aigen. I represent Mr. Dondero,</p> <p>25 HCMS and HCRE Partners in several of the adversary</p>	96
93	<p>1 proceedings today.</p> <p>2 I'm going to try to ask you some questions</p> <p>3 about these adversary proceedings. I'll try to make it</p> <p>4 as quick as possible so we don't keep you here.</p> <p>5 You understand that you're still under oath;</p> <p>6 is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. First topic I want to ask you about is one of</p> <p>9 the defenses in this case related to an oral agreement.</p> <p>10 Let me start off with this question.</p> <p>11 Are you aware that some of the defendants in</p> <p>12 these adversary proceedings have raised a defense that</p> <p>13 there was a subsequent oral agreement allowing the</p> <p>14 notes at issue to be potentially forgiven if certain</p> <p>15 events occurred?</p> <p>16 A. I've recently been made aware that this came</p> <p>17 up, yes.</p> <p>18 Q. When you say recently, approximately when?</p> <p>19 A. Within the last week.</p> <p>20 Q. And where did you learn that from?</p> <p>21 A. In my speakings with John Morris just</p> <p>22 preparing for today.</p> <p>23 MR. AIGEN: And John, I'm going to assume</p> <p>24 that those conversations are privileged?</p> <p>25 MR. MORRIS: That's a very fair assumption.</p>	96



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97	<p>1 A. No.</p> <p>2 Q. Never discussed it with Mr. Klos?</p> <p>3 A. No. Well, sorry, Mr. Klos was present when</p> <p>4 John and I talked about it. But that's it.</p> <p>5 Q. Have you ever made any investigation or</p> <p>6 effort in order to determine if this oral agreement</p> <p>7 actually occurred?</p> <p>8 A. No.</p> <p>9 Q. If there was such an oral agreement to</p> <p>10 potentially forgive the notes, do you believe that you</p> <p>11 would have known about such an oral agreement as part</p> <p>12 of your duties and responsibilities?</p> <p>13 A. Yes, I would hope so.</p> <p>14 Q. Why do you say that?</p> <p>15 A. That's something that should be disclosed in</p> <p>16 audited financial statements, and me and my team are</p> <p>17 responsible for preparing those financial statements</p> <p>18 and presenting them to the auditors as fair and</p> <p>19 accurate.</p> <p>20 Q. And is it fair to say that this oral</p> <p>21 agreement should have been disclosed to PwC if it was</p> <p>22 determined that it was material?</p> <p>23 A. Yes.</p> <p>24 Q. And have you done any sort of analysis to</p> <p>25 determine whether the oral agreement at issue here</p>	99
98	<p>1 would have been material for purposes of a PwC audit?</p> <p>2 A. I've not done any work, just finding out</p> <p>3 about it, but from what it sounds like, it would be</p> <p>4 material.</p> <p>5 Q. That's your opinion, that it would have been</p> <p>6 material; is that fair to say?</p> <p>7 A. Fair.</p> <p>8 Q. Have you had any discussions with anyone else</p> <p>9 about whether the oral agreement would have been</p> <p>10 material?</p> <p>11 A. No.</p> <p>12 Q. Changing topics a little bit here, are you</p> <p>13 aware --</p> <p>14 (Off the record.)</p> <p>15 Q. (BY MR. AIGEN) Are you aware that a few of</p> <p>16 the loans at issue here, specifically related to HCMS</p> <p>17 and HCRE, were term loans as opposed to demand loans?</p> <p>18 A. Yes.</p> <p>19 Q. And are you aware that for those particular</p> <p>20 loans, there were payments that were supposed to be</p> <p>21 made but weren't on December 31, 2020?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have any understanding as to why those</p> <p>24 payments weren't made with respect to the HCMS and HCRE</p> <p>25 term loans on December 31, 2020?</p>	100
99	<p>1 A. Yes.</p> <p>2 Q. Can you tell me why?</p> <p>3 A. Sure. It goes along with the same statement</p> <p>4 as HCMFA and NPA and the phone call that I got from</p> <p>5 Frank Waterhouse saying there's no payments coming from</p> <p>6 any of the affiliates to the debtor.</p> <p>7 Q. I may have written that down wrong when you</p> <p>8 talked about that before, but I believe your earlier</p> <p>9 testimony when you described that conversation was that</p> <p>10 there was no more payments coming from the Advisors,</p> <p>11 not affiliates.</p> <p>12 Let me ask you then, what was the</p> <p>13 conversation? Was it no more payments from affiliates</p> <p>14 or Advisors?</p> <p>15 A. It could have been either. I probably did</p> <p>16 say Advisors. But regardless, those payments would</p> <p>17 have been directed to me to be made, either by Frank</p> <p>18 Waterhouse or Jim Dondero.</p> <p>19 And I would assume that nobody directed me to</p> <p>20 make those payments because we weren't making any</p> <p>21 payments from Jim's related parties. I don't know for</p> <p>22 a fact, but that's what I would assume. Those were all</p> <p>23 under the same umbrella.</p> <p>24 Q. And again, let's back up a second.</p> <p>25 When you refer to Advisors, fair to say that</p>	100

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101	<p>1 A. Sure. Typically what would have happened is</p> <p>2 Frank would be talking to Jim Dondero about making</p> <p>3 these payments and getting his approval to do so,</p> <p>4 because Jim Dondero is, you know, directing payments</p> <p>5 out of these entities.</p> <p>6 I have never -- had never been given the</p> <p>7 direction to effectuate those payments by anybody.</p> <p>8 Q. Is it fair to say, then, that you're not</p> <p>9 aware of any instructions from anyone saying that the</p> <p>10 HCMS and HCRE payments should not be made on</p> <p>11 December 31, 2020?</p> <p>12 A. That's fair.</p> <p>13 Q. So the reason the payments weren't made is</p> <p>14 because you never got an affirmative instruction to</p> <p>15 actually make that payment; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you're not aware of Mr. Dondero</p> <p>18 instructing anyone that HCMS and HCRE should not have</p> <p>19 made the December 31, 2020, payments; is that correct?</p> <p>20 A. I'm not aware personally, no. Correct.</p> <p>21 Q. You say personally. In any way are you aware</p> <p>22 of such a specific instruction?</p> <p>23 A. No.</p> <p>24 Q. If that payment was to be made, who at the</p> <p>25 debtor would have been responsible for making those</p>	103
102	<p>1 payments on behalf of HCMS and HCRE?</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: The corporate accounting team.</p> <p>5 Q. (BY MR. AIGEN) And that included you?</p> <p>6 A. Yes.</p> <p>7 Q. And in December of 2020, were you aware that</p> <p>8 those payments were due on December 31, 2020?</p> <p>9 A. Yes.</p> <p>10 Q. Did you make any attempts or efforts to</p> <p>11 determine whether Mr. Dondero wanted those payments to</p> <p>12 be made?</p> <p>13 A. I did not, no.</p> <p>14 Q. Why not?</p> <p>15 A. That would have been something that Frank</p> <p>16 Waterhouse would have done directly with Jim Dondero</p> <p>17 himself.</p> <p>18 Q. Did you have any conversations with anyone</p> <p>19 about whether the December 31 payments for HCMS and</p> <p>20 HCRE would be made in December of 2020?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. And you didn't think it was your</p> <p>23 responsibility to check on those payments and find out</p> <p>24 if they should have been made?</p> <p>25 A. Right, correct.</p>	104
101	<p>1 Q. And is that because it's only your job to</p> <p>2 make payments that you're told to specifically make; is</p> <p>3 that correct?</p> <p>4 A. Yes, in this case, that is correct.</p> <p>5 Q. Is it fair to say then that as part of your</p> <p>6 job responsibilities you've never made a payment to</p> <p>7 anyone without being specifically told by Mr. Dondero</p> <p>8 and Mr. Waterhouse?</p> <p>9 A. Sorry, say that again.</p> <p>10 Q. As part of your job responsibilities, have</p> <p>11 you ever made a payment to anyone without the specific</p> <p>12 instruction of Mr. Waterhouse or Mr. Dondero?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: Yes, we make payments all the</p> <p>16 time.</p> <p>17 Q. (BY MR. AIGEN) So why is this different in</p> <p>18 that this payment was not made without the specific</p> <p>19 instructions from Mr. Waterhouse and Mr. Dondero, even</p> <p>20 though you believed the payment was due on December 31,</p> <p>21 2020?</p> <p>22 A. The difference between making a loan payment</p> <p>23 and making normal course -- or sorry, normal, ordinary</p> <p>24 course, you know, overhead expense payments is that</p> <p>25 something like that is not necessarily what we would</p>	103
102	<p>1 take to Jim Dondero to approve.</p> <p>2 He doesn't have time to approve every single</p> <p>3 overhead payment that we're making out of every single</p> <p>4 entity. That's what Frank is for.</p> <p>5 Something that's once a year that's more</p> <p>6 material in amount, such as a loan payment, that is</p> <p>7 something that needs to get approved by Jim Dondero.</p> <p>8 Q. You say needs to get approved. What's your</p> <p>9 basis for that, something in a policy manual, something</p> <p>10 someone told you?</p> <p>11 A. It's a policy that my team followed. I don't</p> <p>12 think that it's written in an actual manual anywhere,</p> <p>13 but anything that's not ordinary course needs to get</p> <p>14 approved by Jim Dondero.</p> <p>15 Q. Is that something that's written in a policy</p> <p>16 anywhere?</p> <p>17 A. Not that I know of.</p> <p>18 Q. Were you ever told that payments in the</p> <p>19 ordinary course can be made without Mr. Dondero's</p> <p>20 approval but loan payments cannot?</p> <p>21 A. Yes, I do recall years ago that Frank and I,</p> <p>22 possibly Jim, this was years ago, had a conversation</p> <p>23 that anything ordinary course is up to Frank to</p> <p>24 approve. And this is, quite frankly, up to Frank.</p> <p>25 Whatever he felt Jim needed to sign off on,</p>	104

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105	<p>1 that's what Jim would sign off on. This was not my                  2 responsibility to make that decision.                  3 Q. And in December -- prior to the December 31,                  4 2020, due date you didn't have any conversations with                  5 anyone about whether this -- these payments that were                  6 due should be made; is that correct?                  7 A. Correct.                  8 Q. And you didn't try to check with anyone to                  9 see whether anyone wanted these payments to be made; is                  10 that correct?                  11 A. Correct.                  12 Q. Subsequent to the payment being missed, did                  13 you ever have any conversations with anyone about why                  14 the payment was not made?                  15 A. Not that I recall.                  16 Q. So is it fair to say that sitting here today                  17 you have no idea why the payments were not made for                  18 HCMS and HCRE on December 31, 2020?                  19 MR. MORRIS: Objection to the form of the                  20 question.                  21 THE WITNESS: I don't have any specific                  22 evidence telling me why they weren't. I can make                  23 assumptions but that's not going to help.                  24 Q. (BY MR. AIGEN) Well, did you ever have any                  25 conversations with anyone about why those payments were</p>	107	<p>1 A. I can't tell you the exact date, but, yes, I                  2 do have a recollection of Frank calling or emailing me                  3 to have, I believe it was the HCRE wire sent out for                  4 their payment.                  5 Q. What about the HCMS payment?                  6 A. I don't recall that one as much.                  7 Q. Other than the payment being made, do you                  8 have any recollection of any other conversations about                  9 why the payment was being made?                  10 A. No.                  11 Q. Are you aware of any conversations that                  12 anyone had regarding whether these payments would                  13 deaccelerate loans?                  14 A. No.                  15 Q. Is that something you would normally be part                  16 of, conversations like that?                  17 A. No.                  18 Q. Changing topics here. Not sure if this is an                  19 area that you know anything about.                  20 Are you familiar with the term, as it's used                  21 at Highland, NAV ratio trigger period?                  22 A. No.                  23 Q. This may go very quick. If I represent to                  24 you that it's a term that's used in the -- in the                  25 fourth amended limited partnership agreement for</p>
106	<p>1 not made?                  2 A. No.                  3 Q. You have no idea why they weren't made other                  4 than just speculation; is that fair to say?                  5 A. Correct.                  6 MR. MORRIS: Objection. Asked and answered.                  7 THE WITNESS: Correct.                  8 Q. (BY MR. AIGEN) And are you aware that with                  9 respect to those two loans, some payments were actually                  10 made in the next month, in January of 2021?                  11 A. Yes.                  12 Q. What role, if any, did you have with respect                  13 to those payments?                  14 A. Frank Waterhouse would call me and tell me to                  15 have my team effectuate a wire.                  16 Q. And you say would call you. Do you remember                  17 this conversation or are you just assuming it occurred?                  18 MR. MORRIS: Objection to the form of the                  19 question.                  20 THE WITNESS: If we sent a payment out, Frank                  21 would have told me to do it. I would not have done it                  22 on my own.                  23 Q. (BY MR. AIGEN) Sitting here today, do you                  24 have a specific recollection of the conversation where                  25 someone told you to make the January 2021 payments?</p>	108	<p>1 Highland Capital Management, would that refresh your                  2 recollection at all?                  3 A. No.                  4 Q. Fair to say, then, that you have no knowledge                  5 as to whether NAV ratio trigger period was ever reached                  6 at any time prior to bankruptcy buyouts?                  7 A. No, I don't know.                  8 Q. Have you ever had any conversations with                  9 Nancy Dondero?                  10 A. I have not.                  11 Q. Never met her?                  12 A. No. I may have exchanged an email with her                  13 on an invoice, but that's the extent of it. No                  14 conversations.                  15 Q. In the years leading up to the bankruptcy of                  16 Highland Capital, was there any time period where                  17 Highland was unable to pay its salaries?                  18 A. Salaries?                  19 Q. Salaries of its employees?                  20 A. No.                  21 Q. In the time leading up to the Highland                  22 bankruptcy, was there any time period where Highland                  23 wasn't able to pay bonuses owed to any of its                  24 employees?                  25 A. Not that I know of. Not that I can recall.</p>

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109	<p>1 Q. Are you aware of any time period leading up</p> <p>2 to the Highland bankruptcy where Highland was unable to</p> <p>3 pay its bills?</p> <p>4 A. There's times where we would be in a cash</p> <p>5 flow crunch and we would stretch our AP, but eventually</p> <p>6 it would get paid.</p> <p>7 Q. And I think this is the last topic and we can</p> <p>8 probably move through this pretty quickly.</p> <p>9 Are you aware of any loans made by Highland</p> <p>10 to any of its employees or officers that were forgiven</p> <p>11 in part or all?</p> <p>12 A. Yes.</p> <p>13 Q. Which officers or employees are you aware of?</p> <p>14 A. I recall there were two employees. I can't</p> <p>15 remember one of them, but I believe another, the second</p> <p>16 one, was Paul Adkins. Again, I'm just recalling this</p> <p>17 was years ago.</p> <p>18 Q. And these two are the only ones you're aware</p> <p>19 of?</p> <p>20 A. Or I'm sorry, not Paul Adkins, Tim Lawler.</p> <p>21 It's possible Paul Adkins was the other one, but I</p> <p>22 can't tell you for sure.</p> <p>23 Q. Tim Lawler and some other employee that you</p> <p>24 can't remember the name of are the only two that you're</p> <p>25 aware of?</p>	111
110	<p>1 A. Yes.</p> <p>2 Q. This other employee, I know you don't</p> <p>3 remember the name. Is there any other description that</p> <p>4 you can give me, what their position was, how long they</p> <p>5 worked, or is it just you remember those loans?</p> <p>6 A. I just remember we had two employee loans.</p> <p>7 Q. Approximately when was this?</p> <p>8 A. I couldn't even tell you. All the years just</p> <p>9 commingle together.</p> <p>10 Q. More than five years ago?</p> <p>11 A. Yes.</p> <p>12 Q. More than 10 years ago?</p> <p>13 A. I couldn't say.</p> <p>14 MR. AIGEN: Why don't we take a five-minute</p> <p>15 break and then I'll either be done or have just a few</p> <p>16 wrap-up questions.</p> <p>17 MR. RUKAVINA: Okay.</p> <p>18 (Off the record.)</p> <p>19 FURTHER EXAMINATION</p> <p>20 Q. (BY MR. RUKAVINA) Ms. Hendrix, in May of</p> <p>21 2019, would you on behalf of Highland alone,</p> <p>22 unilaterally, have the authority to lend to HCMFA 2.4-</p> <p>23 and/or \$5.0 million?</p> <p>24 A. No.</p> <p>25 Q. And would you have had any authority on</p>	112
109	<p>1 behalf of HCMFA in May of 2019 to bind HCMFA to such</p> <p>2 notes?</p> <p>3 A. No.</p> <p>4 Q. Thank you, ma'am.</p> <p>5 EXAMINATION</p> <p>6 Q. (BY MR. MORRIS) Ms. Hendrix, can you get out</p> <p>7 of your pile, Exhibit Number 3.</p> <p>8 And this is the email from Dave Klos to</p> <p>9 corporate accounting on May 2nd concerning the</p> <p>10 \$2.4 million that was going to be transferred from</p> <p>11 HCMLP to HCMFA?</p> <p>12 A. Yes.</p> <p>13 Q. And how did Mr. Klos characterize that</p> <p>14 transfer?</p> <p>15 A. He called it a new intercompany loan.</p> <p>16 Q. What does a new intercompany loan mean to</p> <p>17 you?</p> <p>18 A. That means we are creating a new loan</p> <p>19 document, sending money out, tracking it as a</p> <p>20 brand-new, fresh loan.</p> <p>21 Q. And he sent this email to an email group</p> <p>22 called corporateaccounting@hcmlp.com. Do I have that</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. Were you included in that email group?</p>	111
110	<p>1 A. I was.</p> <p>2 Q. Can you identify everybody else who you</p> <p>3 recall being in that email group?</p> <p>4 A. Yes.</p> <p>5 Q. Who else was in that email group?</p> <p>6 A. Dave Klos, Frank Waterhouse, myself, Hayley</p> <p>7 Eliason, and Blair Roeber.</p> <p>8 Q. Okay. Did Mr. Waterhouse ever tell anybody,</p> <p>9 to the best of your knowledge, in May 2019 that the</p> <p>10 transaction should not be booked as a loan?</p> <p>11 A. No, not to my knowledge.</p> <p>12 Q. You testified earlier that there was, you</p> <p>13 recall, a similar email the next day with respect to a</p> <p>14 \$5 million transaction.</p> <p>15 Do you recall that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall if that email also went to</p> <p>18 corporate accounting?</p> <p>19 A. I believe so, yes.</p> <p>20 Q. And to the best of your knowledge, would</p> <p>21 Mr. Waterhouse have been informed on May 3, 2019, that</p> <p>22 the transaction was being booked by the corporate</p> <p>23 accounting department as a loan?</p> <p>24 A. Yes.</p> <p>25 Q. Did Mr. Waterhouse tell you at that time or</p>	112

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113	<p>1 at any time thereafter that it was a mistake to book it</p> <p>2 as a loan?</p> <p>3 A. No.</p> <p>4 Q. Did Mr. Waterhouse tell you at that time or</p> <p>5 at any time thereafter that he didn't intend to sign</p> <p>6 the promissory notes?</p> <p>7 A. No.</p> <p>8 MR. RUKAVINA: Objection. To the last</p> <p>9 question, objection to form.</p> <p>10 Go ahead.</p> <p>11 Q. (BY MR. MORRIS) Okay. The promissory notes,</p> <p>12 to be clear, are the two promissory notes that you</p> <p>13 testified to earlier that have been marked as exhibits</p> <p>14 in this deposition for \$5 million and \$2.4 million</p> <p>15 respectively.</p> <p>16 With that definition as promissory notes, did</p> <p>17 Mr. Waterhouse ever tell you at any time that it was a</p> <p>18 mistake to sign those notes?</p> <p>19 MR. RUKAVINA: I'll object to the form.</p> <p>20 Go ahead.</p> <p>21 THE WITNESS: No.</p> <p>22 Q. (BY MR. MORRIS) Did Mr. Waterhouse or</p> <p>23 anybody -- withdrawn. I'll go back to the first</p> <p>24 question.</p> <p>25 Did Mr. Waterhouse or anybody in the world</p>	115	<p>1 HCMFA. I oversaw all other aspects of the audit my</p> <p>2 team carried out.</p> <p>3 Any requests from the auditors, emails with</p> <p>4 questions, any issues that arose, all of that went</p> <p>5 through me.</p> <p>6 Q. And did Mr. Waterhouse play a role in</p> <p>7 relation to the annual audit?</p> <p>8 A. Yes.</p> <p>9 Q. What is your understanding of</p> <p>10 Mr. Waterhouse's role?</p> <p>11 A. Let's see. He was in charge of reviewing the</p> <p>12 financial statements as they were done, so he saw the</p> <p>13 end product. He would sign off on the management rep</p> <p>14 letter. He signed engagement letters.</p> <p>15 If there were any big issues, those got --</p> <p>16 those would be brought to Frank's attention for sure.</p> <p>17 Q. Okay. And are you a CPA?</p> <p>18 A. Yes.</p> <p>19 Q. And are you familiar with management rep</p> <p>20 letters?</p> <p>21 A. Yes.</p> <p>22 Q. What is your understanding of what a</p> <p>23 management rep letter is?</p> <p>24 A. That's basically telling the auditors that</p> <p>25 everything in the audited financial report is accurate</p>
114	<p>1 ever tell you at any time since May of 2019 that it was</p> <p>2 a mistake to issue the promissory notes as we've</p> <p>3 defined them?</p> <p>4 A. No.</p> <p>5 Q. Did Mr. Waterhouse or anybody in the world</p> <p>6 tell you that Mr. Waterhouse wasn't authorized to affix</p> <p>7 his signature to those promissory notes?</p> <p>8 MR. RUKAVINA: And I'll object. Assumes</p> <p>9 facts not in evidence, i.e., the signature. That's</p> <p>10 what I've been objecting to.</p> <p>11 But go ahead and answer.</p> <p>12 THE WITNESS: Say it again.</p> <p>13 Q. (BY MR. MORRIS) Did Mr. Waterhouse or</p> <p>14 anybody in the world tell you at any time that he</p> <p>15 wasn't authorized to have his signature affixed to the</p> <p>16 promissory notes?</p> <p>17 MR. RUKAVINA: Same objection.</p> <p>18 THE WITNESS: No.</p> <p>19 Q. (BY MR. MORRIS) Did you have anything to do</p> <p>20 with Highland's annual audit?</p> <p>21 A. Yes.</p> <p>22 Q. What role did you play with respect to</p> <p>23 Highland's annual audit?</p> <p>24 A. I personally was in charge of completely</p> <p>25 writing the entire audit report for the debtor and for</p>	116	<p>1 to the best of their knowledge, they've presented</p> <p>2 everything that they have fair and accurately, they're</p> <p>3 not withholding any information.</p> <p>4 Q. And do you recall that the -- Highland's 2018</p> <p>5 audit was completed in early June 2019?</p> <p>6 A. Yes.</p> <p>7 Q. And did you cause the two promissory notes</p> <p>8 that we're talking about here to be delivered to</p> <p>9 PricewaterhouseCoopers in connection with the audit?</p> <p>10 A. Yes.</p> <p>11 Q. And were those two promissory notes delivered</p> <p>12 to PricewaterhouseCoopers because they constituted</p> <p>13 subsequent events?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall whether those promissory notes</p> <p>16 were described in Highland's 2018 audited financial</p> <p>17 statements?</p> <p>18 A. Yes.</p> <p>19 Q. And did Mr. Waterhouse or Mr. Dondero ever</p> <p>20 tell you at any time that there was a mistake in the</p> <p>21 audited financial statements?</p> <p>22 A. No.</p> <p>23 Q. Did they ever tell you -- did Mr. Waterhouse</p> <p>24 or Mr. Dondero or anybody in the world ever tell you at</p> <p>25 any time that the two notes were mischaracterized in</p>

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117	<p>1 the 2018 audited financial statements of Highland                  2 Capital?                  3 A. No.                  4 Q. Do you know whether HCMFA also had its annual                  5 financial statements audited by PricewaterhouseCoopers?                  6 A. Yes.                  7 Q. Did you play any role in connection with that                  8 audit?                  9 A. Yes.                  10 Q. What role did you play in connection with                  11 HCMFA's audit of the 2018 financial statements?                  12 A. Same exact role as with the debtors --                  13 Q. And --                  14 A. -- writing the audit report, overseeing all                  15 other audit functions.                  16 Q. And did you and your group cause HCMFA to                  17 deliver to PricewaterhouseCoopers the two promissory                  18 notes that we've been discussing from May 2019?                  19 A. Yes.                  20 Q. Did Mr. Waterhouse or Mr. Dondero or anybody                  21 in the world ever tell you that it was a mistake to                  22 deliver those promissory notes to PwC in connection                  23 with HCMFA's 2018 audit?                  24 A. No.                  25 Q. Were those notes delivered -- withdrawn.</p>	119	<p>1 reference to these notes in HCMFA's 2018 audited                  2 financial statements?                  3 MR. RUKAVINA: Same objection.                  4 THE WITNESS: No.                  5 Q. (BY MR. MORRIS) Okay. Do you recall, did                  6 anybody in the world ever tell you that the                  7 transactions described in Exhibit 3 and the other                  8 document that you recall should never have been booked                  9 as a loan?                  10 A. No.                  11 Q. Did anybody in the world tell you that you                  12 made a mistake when you created those promissory notes?                  13 A. No.                  14 Q. Can you pull out what was marked as                  15 Exhibit 16.                  16 Do you understand that the Advisors provide                  17 services to certain retail funds?                  18 A. Yes.                  19 Q. And do you recall that the services are                  20 subject to an agreement that's subject to annual                  21 review?                  22 A. Yes.                  23 Q. So looking at Exhibit 16, did you understand                  24 that the retail board had asked Highland to disclose --                  25 I'll just read it from the document on page 2,</p>
118	<p>1 Were those notes delivered to                  2 PricewaterhouseCoopers because they constituted                  3 subsequent events in connection with the 2018 audit?                  4 A. Yes.                  5 Q. Do you recall whether PricewaterhouseCoopers                  6 included as a liability on HCMFA's balance sheet the                  7 obligations reflected in the two promissory notes at                  8 issue?                  9 MR. RUKAVINA: Objection. Best evidence.                  10 Answer.                  11 THE WITNESS: On the 2018 financials?                  12 Q. (BY MR. MORRIS) Correct.                  13 A. Those would not have been included as                  14 liabilities in the 2018 financials.                  15 Q. Do you know if HCMFA completed their audit                  16 for 2019?                  17 A. No.                  18 Q. Okay. Did the notes appear in HCMFA's 2018                  19 audited financials under the subsequent events section?                  20 A. Yes.                  21 MR. RUKAVINA: Objection. Best evidence.                  22 Go ahead.                  23 Q. (BY MR. MORRIS) Did Mr. Dondero or -- did                  24 Mr. Waterhouse or Mr. Dondero or anybody in the world                  25 ever tell you that it was a mistake to include</p>	120	<p>1 Bates number ending 881.                  2 There's an email from Ms. Thedford that says,                  3 quote, are there any material amounts -- withdrawn.                  4 Are there any material outstanding amounts                  5 currently payable or due in the future, open paren,                  6 e.g., notes, close paren, to HCMLP by HCMFA or NexPoint                  7 Advisors or any other affiliate that provides services                  8 to the funds?                  9 Do you see that?                  10 A. Yes.                  11 Q. And were you generally aware that that was                  12 part of the annual renewal process?                  13 A. Yes.                  14 Q. And you made some comments earlier about                  15 Ms. Thedford's response on the first page.                  16 Do you recall that?                  17 A. Yes.                  18 Q. And you actually were able to correct certain                  19 mistakes that you perceived in her response.                  20 Do I have that right?                  21 A. Correct.                  22 Q. Do you know -- do you see where it says,                  23 HCMFA due to HCMLP as of June 30, 2020, let's just call                  24 it \$12.3 million.                  25 Do you see that?</p>

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121	<p>1 A. Yes.</p> <p>2 Q. And above that there is a reference to the</p> <p>3 6/30 financials.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Do you know what the reference to the 6/30</p> <p>7 financials is?</p> <p>8 A. Yes.</p> <p>9 Q. And what is that reference?</p> <p>10 A. That is referencing the amounts on the</p> <p>11 balance sheet at 6/30 that we provided for the 15(c)</p> <p>12 materials to the board.</p> <p>13 Q. Okay. And does that \$12.3 million include,</p> <p>14 to the best of your knowledge, the principal amount of</p> <p>15 the two notes that we were talking about?</p> <p>16 A. Yes.</p> <p>17 MR. RUKAVINA: Objection. Best evidence.</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q. (BY MR. MORRIS) And how do you know that?</p> <p>20 A. Because I kept their financials, I know for a</p> <p>21 fact that it included all of their outstanding notes</p> <p>22 and it most certainly included these two notes that</p> <p>23 we've been talking about today.</p> <p>24 Q. And to the best of your recollection did</p> <p>25 HCMFA provide the 6/30 financials to the retail board?</p>	123	<p>1 was given to the retail board?</p> <p>2 A. I likely did. I can't tell you for certain</p> <p>3 that I was on the correspondence.</p> <p>4 Q. Do you recall any discussion at any time that</p> <p>5 the \$12.3 million number in Ms. Thedford's email should</p> <p>6 be changed in the final report to the retail board?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Did anybody ever tell you at any time that</p> <p>9 the \$12.3 million number was incorrect?</p> <p>10 A. No.</p> <p>11 Q. Did anybody ever tell you at any time that</p> <p>12 that number wrongly included the \$7.4 million reflected</p> <p>13 in the two notes?</p> <p>14 A. No.</p> <p>15 Q. Okay. Do you recall that earlier that</p> <p>16 summer -- we looked at Exhibit 15?</p> <p>17 A. Yep.</p> <p>18 Q. And that was an attachment to an email that</p> <p>19 you personally sent to Mr. Dondero. We saw that</p> <p>20 before?</p> <p>21 A. Right.</p> <p>22 Q. And this Exhibit 15, which was attached to</p> <p>23 your email, identifies amounts due and owing from</p> <p>24 NexPoint Advisors; right?</p> <p>25 A. Right.</p>
122	<p>1 A. Yes.</p> <p>2 Q. And to the best of your knowledge did</p> <p>3 Mr. Dondero or Mr. Waterhouse or anybody in the world</p> <p>4 ever tell you that the financial statements that were</p> <p>5 provided to the retail board were erroneous in any way?</p> <p>6 A. No.</p> <p>7 Q. Did Mr. Dondero or Mr. Waterhouse or anybody</p> <p>8 in the world ever tell you that the 6/30 financials</p> <p>9 that were given to the retail board should not have</p> <p>10 included the \$7.4 million principal amount on the two</p> <p>11 promissory notes?</p> <p>12 MR. RUKAVINA: Objection. Best evidence.</p> <p>13 Answer.</p> <p>14 THE WITNESS: No.</p> <p>15 Q. (BY MR. MORRIS) Do you know whether -- are</p> <p>16 you at all familiar with the Advisors' actual response</p> <p>17 to the retail board in October 2020?</p> <p>18 A. Say that again, please.</p> <p>19 Q. So this email string is October 2020; right?</p> <p>20 A. Right.</p> <p>21 Q. And do you understand that this is kind of a</p> <p>22 discussion between Mr. Waterhouse and Ms. Thedford as</p> <p>23 to how to respond?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen the actual response that</p>	124	<p>1 Q. And it identifies amounts due and owing for a</p> <p>2 number of different entities, including HCMFA; right?</p> <p>3 A. Correct.</p> <p>4 Q. Do you know whether the amount included for</p> <p>5 HCMFA on Exhibit 15 included the principal amount due</p> <p>6 on the two promissory notes?</p> <p>7 A. It does.</p> <p>8 Q. Did Mr. Dondero or Mr. Waterhouse ever ask</p> <p>9 you why -- withdrawn.</p> <p>10 Did Mr. Dondero or Mr. Waterhouse ever ask</p> <p>11 you how the \$10.5 million number was calculated?</p> <p>12 A. No.</p> <p>13 Q. Did Mr. Dondero or Mr. Waterhouse ever</p> <p>14 suggest to you that the number was incorrect?</p> <p>15 A. No.</p> <p>16 Q. Did Mr. Dondero or Mr. Waterhouse or anybody</p> <p>17 in the world ever question the number that you gave to</p> <p>18 Mr. Dondero in the summer of 2020 concerning the</p> <p>19 principal amount due by HCMFA to HCMLP?</p> <p>20 A. No.</p> <p>21 Q. Have you ever made a payment -- withdrawn.</p> <p>22 Have you ever caused a payment to be made in</p> <p>23 connection with an intercompany loan without receiving</p> <p>24 the prior approval from either Frank Waterhouse or</p> <p>25 Mr. Dondero?</p>

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125	<p>1 A. No.</p> <p>2 Q. Has anybody ever said to you that you made a</p> <p>3 mistake in applying a payment against principal or</p> <p>4 interest due on an intercompany loan?</p> <p>5 A. No.</p> <p>6 Q. We saw this morning, and we produced to</p> <p>7 Mr. Rukavina and he mentioned earlier, 13-week</p> <p>8 forecasts? Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. Did you review the 13-week forecasts</p> <p>11 recently?</p> <p>12 A. Yes.</p> <p>13 Q. And we're talking specifically about the</p> <p>14 13-week forecasts for the November/December 2020 time</p> <p>15 period. Do you understand that?</p> <p>16 A. Yes.</p> <p>17 Q. Based on your review of those forecasts, did</p> <p>18 those forecasts specifically identify the principal and</p> <p>19 interest that were due on the three term notes as of</p> <p>20 December 28, 2020?</p> <p>21 A. Yes.</p> <p>22 Q. And what was the purpose of creating the</p> <p>23 13-week forecasts?</p> <p>24 A. Sure. That was to keep everybody informed</p> <p>25 who was on the cash call, Frank Waterhouse, Jim Seery</p>	127	<p>1 A. Yes.</p> <p>2 Q. And was that information that was included on</p> <p>3 the reports to Mr. Waterhouse?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recall whether there were any</p> <p>6 specific discussions in November or December of 2020</p> <p>7 concerning those payments -- withdrawn. That wasn't a</p> <p>8 good question.</p> <p>9 Did Mr. Waterhouse or -- withdrawn.</p> <p>10 Did anybody on behalf of HCMS or HCRE ever</p> <p>11 instruct you to make the payments that were due under</p> <p>12 their term notes?</p> <p>13 A. No.</p> <p>14 Q. Did anybody on behalf of NexPoint ever</p> <p>15 instruct you to make a payment that was due at year end</p> <p>16 with respect to the NexPoint term note?</p> <p>17 A. No.</p> <p>18 Q. Were you authorized to make those payments</p> <p>19 without the prior approval of either Mr. Waterhouse or</p> <p>20 Mr. Dondero?</p> <p>21 A. No.</p> <p>22 Q. I think you testified that there were certain</p> <p>23 payments that were made in January 2001 under each of</p> <p>24 the three term notes.</p> <p>25 Do I have that right?</p>
126	<p>1 and others, keep everybody informed of upcoming</p> <p>2 payments that were due on term loans well in advance.</p> <p>3 Everybody knew about it. It was out there</p> <p>4 for everybody to see that was on these cash calls.</p> <p>5 Q. Now, is it your understanding that</p> <p>6 Mr. Waterhouse -- withdrawn.</p> <p>7 Did you email these forecasts -- withdrawn.</p> <p>8 Did anybody email these forecasts to the best</p> <p>9 of your recollection in late 2020?</p> <p>10 A. Yes.</p> <p>11 Q. And was it sent to the corporate accounting</p> <p>12 group that we saw earlier?</p> <p>13 A. It was probably sent to Frank, Seery, the DSI</p> <p>14 guys that were involved with the cash call.</p> <p>15 Q. Okay. And so did you participate in the</p> <p>16 creation of the 13-week forecasts?</p> <p>17 A. Yes.</p> <p>18 Q. What role did you play in the creation of the</p> <p>19 13-week forecasts?</p> <p>20 A. I was responsible for creating the entire</p> <p>21 thing.</p> <p>22 Q. Okay. And based on the work that you did,</p> <p>23 was one of the purposes to make sure that</p> <p>24 Mr. Waterhouse was aware of all payments that were</p> <p>25 coming due under the intercompany notes?</p>	128	<p>1 A. Correct.</p> <p>2 MR. RUKAVINA: 2021.</p> <p>3 MR. MORRIS: Thank you very much.</p> <p>4 Q. (BY MR. MORRIS) With that amendment, do you</p> <p>5 understand my question?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know why the three payments were made</p> <p>8 in January of 2021 on each of three term notes?</p> <p>9 A. Because Frank Waterhouse instructed me to do</p> <p>10 so.</p> <p>11 Q. And he had not instructed you to make those</p> <p>12 payments prior to that time?</p> <p>13 A. Correct.</p> <p>14 Q. Did you have to prompt Frank Waterhouse in</p> <p>15 January of 2021 to make those payments?</p> <p>16 A. No.</p> <p>17 Q. So based on the 13-week forecast that you</p> <p>18 prepared and delivered to Mr. Waterhouse, is it your</p> <p>19 understanding that Mr. Waterhouse knew as early as mid</p> <p>20 November 2020 that payments would be due under the</p> <p>21 three term notes at the end of the year?</p> <p>22 A. Yes.</p> <p>23 Q. And, in fact, did HCMS and HCRE and NexPoint</p> <p>24 timely make their installment payments that were due at</p> <p>25 year end 2018?</p>



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129	<p>1 A. Yes.</p> <p>2 Q. And was that done because HCMLP received the</p> <p>3 instructions of somebody authorized to give the</p> <p>4 instruction on behalf of those entities?</p> <p>5 A. Yes.</p> <p>6 Q. Did HCMS and HCRE and NexPoint timely make</p> <p>7 the installment payments that were due at year end</p> <p>8 2019?</p> <p>9 A. Yes.</p> <p>10 Q. And why did they make those payments?</p> <p>11 A. Because we were provided instruction and</p> <p>12 authorization to do so.</p> <p>13 Q. Okay. And is the only reason that the</p> <p>14 payment wasn't made at year end 2020 because nobody on</p> <p>15 behalf of the Advisors -- withdrawn.</p> <p>16 Is the only reason that no payment was made</p> <p>17 at the end of 2020 is because no one on behalf of</p> <p>18 NexPoint, HCRE, or HCMS directed HCMLP to make those</p> <p>19 payments?</p> <p>20 A. Correct.</p> <p>21 MR. AIGEN: Objection. Form.</p> <p>22 Q. (BY MR. MORRIS) And you testified earlier to</p> <p>23 a call that you had with Mr. Waterhouse. I think you</p> <p>24 said it was either November 30 or December 1.</p> <p>25 Do you recall that?</p>	131	<p>1 any reason they weren't, then they were going to raise</p> <p>2 an issue, a going concern issue.</p> <p>3 That came up several years in a row with</p> <p>4 HCMFA.</p> <p>5 Q. Do you recall that the three term notes at</p> <p>6 issue here were all signed on May 31, 2017?</p> <p>7 A. Yes.</p> <p>8 Q. And all of those term notes involved a</p> <p>9 roll-up of previously issued demand notes; is that</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. Do you know why in -- at the end of May 2017</p> <p>13 NexPoint, HCRE, and HCMS rolled up their demand notes</p> <p>14 into individualized term notes?</p> <p>15 A. Yes.</p> <p>16 Q. What is your understanding as to why that</p> <p>17 happened?</p> <p>18 A. That would get the auditors a little bit more</p> <p>19 comfort over our outstanding loans, ensuring that we</p> <p>20 have an amortization schedule, an underlying contract,</p> <p>21 showing that payments will be coming in every year on</p> <p>22 these outstanding receivables.</p> <p>23 Q. Okay. As the person responsible for</p> <p>24 preparing Highland's audit, did anybody ever tell you</p> <p>25 at any time that any of the notes were not valid</p>
130	<p>1 A. Yes.</p> <p>2 Q. And did you personally continue to prepare</p> <p>3 the 13-week forecasts after your conversation with</p> <p>4 Mr. Waterhouse?</p> <p>5 A. Yes.</p> <p>6 Q. And did those 13-week forecasts continue to</p> <p>7 include the payments that were due under the three term</p> <p>8 notes at the year end?</p> <p>9 A. Yes.</p> <p>10 Q. And that's information that you gave to</p> <p>11 Mr. Waterhouse; is that right?</p> <p>12 A. Right.</p> <p>13 Q. Mr. Rukavina elicited from you the fact that</p> <p>14 payments of principal hadn't been made on demand notes</p> <p>15 that were executed in favor of Mr. Dondero's</p> <p>16 affiliates.</p> <p>17 Do you recall that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Was that a topic of conversation with</p> <p>20 PricewaterhouseCoopers at any time?</p> <p>21 A. Yes.</p> <p>22 Q. Can you tell me about that conversation?</p> <p>23 A. Sure. As part of our annual audit, the</p> <p>24 auditors would, you know, make sure that our</p> <p>25 receivables are collectible. And if they thought for</p>	132	<p>1 obligations of the maker?</p> <p>2 A. No.</p> <p>3 Q. As the person responsible for Highland's</p> <p>4 audit, did anybody ever tell you at any time that any</p> <p>5 of the notes at issue should not have been signed?</p> <p>6 A. No.</p> <p>7 Q. As the person responsible for Highland's</p> <p>8 audit, did anybody ever tell you at any time that any</p> <p>9 of the notes at issue were signed by mistake?</p> <p>10 A. No.</p> <p>11 Q. Did anybody ever tell you at any time that --</p> <p>12 withdrawn.</p> <p>13 As the person responsible for Highland's</p> <p>14 audit, did anybody ever tell you at any time that</p> <p>15 Mr. Dondero didn't approve of any of the notes?</p> <p>16 A. No.</p> <p>17 Q. As the person responsible for Highland's</p> <p>18 audit, did anybody ever tell you at any time that</p> <p>19 the -- any of the notes at issue were subject to an</p> <p>20 oral agreement?</p> <p>21 A. No.</p> <p>22 Q. As the person responsible for Highland's</p> <p>23 audit, did anybody ever tell you at any time that any</p> <p>24 of the notes were amended?</p> <p>25 A. No.</p>

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1 Q. As the person responsible for Highland's  
 2 audit, did anybody ever tell you at any time that any  
 3 of the notes would be forgiven?  
 4 A. No.  
 5 Q. During your 15 years at Highland, has an  
 6 intercompany loan ever been forgiven in whole or in  
 7 part?  
 8 A. No.  
 9 Q. During your -- withdrawn.  
 10 Can you recall any note that Highland ever  
 11 held as the payee that was forgiven in whole or in part  
 12 in the five years prior to bankruptcy, go back to 2014?  
 13 A. No.  
 14 Q. Is it your understanding as the person  
 15 responsible for Highland's audit that the forgiveness  
 16 of notes, if they were in a material amount, would have  
 17 had to have been disclosed in the audited financial  
 18 statements?  
 19 A. Yes.  
 20 Q. So is it fair to say that any evidence of the  
 21 forgiveness of material amounts would have been  
 22 disclosed in Highland's financial statements?  
 23 A. Yes.  
 24 MR. MORRIS: I have no further questions.  
 25 MR. RUKAVINA: I have none.

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1 MR. AIGEN: None.  
 2 MR. RUKAVINA: Okay. Thank you very much.  
 3 (Whereupon, the deposition adjourned at  
 4 1:19 P.M.)  
 5 --oOo--  
 6 I declare under penalty of perjury that the  
 7 foregoing is true and correct. Subscribed at  
 8 \_\_\_\_\_, Texas, this \_\_\_\_ day of  
 9 \_\_\_\_\_, 2021.  
 10 \_\_\_\_\_  
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 12  
 13 KRISTIN HENDRIX  
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1 CERTIFICATE OF REPORTER  
 2 I, BRANDON D. COMBS, a Certified Shorthand  
 3 Reporter, hereby certify that the witness in the  
 4 foregoing deposition was by me duly sworn to tell the  
 5 truth, the whole truth, and nothing but the truth in the  
 6 within-entitled cause;  
 7 That said deposition was taken in shorthand by  
 8 me, a disinterested person, at the time and place  
 9 therein stated, and that the testimony of the said  
 10 witness was thereafter reduced to typewriting, by  
 11 computer, under my direction and supervision;  
 12 That before completion of the deposition,  
 13 review of the transcript was not requested. If  
 14 requested, any changes made by the deponent (and  
 15 provided to the reporter) during the period allowed are  
 16 appended hereto.  
 17 I further certify that I am not of counsel or  
 18 attorney for either or any of the parties to the said  
 19 deposition, nor in any way interested in the event of  
 20 this cause, and that I am not related to any of the  
 21 parties thereto.  
 22 DATED: November 1, 2021  
 23  
 24 \_\_\_\_\_  
 25 Brandon Combs, Certified Shorthand

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1 State of Texas  
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 6 Email: info@dickmandavenport.com  
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 8 My commission expires 1-31-23  
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# **EXHIBIT 21**

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1	3
<p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 --oOo--</p> <p>5</p> <p>6 HIGHLAND CAPITAL MANAGEMENT, )</p> <p> L.P., )</p> <p>7 )</p> <p> Plaintiff, )</p> <p>8 )</p> <p> vs. ) No. 21-03004-sgj</p> <p>9 )</p> <p> HIGHLAND CAPITAL MANAGEMENT FUND )</p> <p>10 ADVISORS, L.P., )</p> <p> )</p> <p>11 Defendants. )</p> <p>12</p> <hr/> <p>13 DEPOSITION OF</p> <p>14 DAVID KLOS</p> <p>15 October 27, 2021</p> <p>16</p> <hr/> <p>17</p> <p>18 DEPOSITION OF DAVID KLOS, produced as a</p> <p>19 witness, duly sworn by me via videoconference at the</p> <p>20 instance of the DEFENDANTS, was taken in the</p> <p>21 above-styled and numbered cause on October 27, 2021,</p> <p>22 from 2:30 P.M. to 5:14 P.M., before BRANDON D. COMBS,</p> <p>23 CSR, RPR, in and for the State of Texas, reported by</p> <p>24 computerized machine shorthand, at 500 North Akard</p> <p>25 Street, 38th Floor, Dallas, Texas.</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Examination by MR. RUKAVINA 4</p> <p>4 Examination by MR. AIGEN 95</p> <p>5 Examination by MR. MORRIS 109</p> <p>6 Further Examination by MR. RUKAVINA 127</p> <p>7</p> <p>8</p> <p>9</p> <p>10 (No exhibits marked.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
2	4
<p>1 APPEARANCES</p> <p>2</p> <p>3 MUNSCH, HARDT, KOPF &amp; HARR, PC, 500 North</p> <p>4 Akard Street, Suite 3800, Dallas, TX 75201, represented</p> <p>5 by DAVOR RUKAVINA, Attorney at Law, appeared via</p> <p>6 videoconference as counsel on behalf of the Defendants.</p> <p>7 Email: drukavina@munsch.com</p> <p>8</p> <p>9</p> <p>10 PACHULSKI, STANG, ZIEHL &amp; JONES, 780 Third</p> <p>11 Avenue, 34th Floor, New York, NY 10017-2024, represented</p> <p>12 by JOHN A. MORRIS, Attorney at Law, appeared via</p> <p>13 videoconference as counsel on behalf of the Plaintiff.</p> <p>14 Email: jmorris@pszjlaw.com</p> <p>15</p> <p>16</p> <p>17 STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777,</p> <p>18 Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney</p> <p>19 at Law, appeared via videoconference as counsel on</p> <p>20 behalf of the Defendants Jim Dondero, HCMS and HCRE</p> <p>21 Partners.</p> <p>22 Email: michael.aigen@stinson.com</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 DAVID KLOS,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 Q. (BY MR. RUKAVINA) Sir, state your name for</p> <p>5 the record, please.</p> <p>6 A. David Klos.</p> <p>7 Q. K-l-o-s?</p> <p>8 A. K-l-o-s.</p> <p>9 Q. What's your date of birth?</p> <p>10 A. May 6, 1982.</p> <p>11 Q. And where do you live?</p> <p>12 A. I live in Dallas.</p> <p>13 Q. What's your educational background?</p> <p>14 A. Undergraduate and graduate degrees. I went</p> <p>15 to undergrad at Boston College, graduate school at SMU,</p> <p>16 with a degree in, Master's of Science in accounting and</p> <p>17 MBA from SMU.</p> <p>18 Q. Do you hold any professional licenses?</p> <p>19 A. CPA in the state of Texas and, I don't know</p> <p>20 if it's technically a license, but Series 27 from</p> <p>21 FINRA.</p> <p>22 Q. And when did you get your CPA license?</p> <p>23 A. I don't recall specifically, but it would</p> <p>24 have been probably in the '08, '09 time frame.</p> <p>25 Q. Is it current?</p>



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5	<p>1 A. As far as I know.</p> <p>2 Q. Have you ever been disciplined or threatened</p> <p>3 with disciplinary proceedings?</p> <p>4 A. No.</p> <p>5 Q. And your relevant work experience, please,</p> <p>6 starting with college and afterwards?</p> <p>7 A. Sure. Out of grad school I started working</p> <p>8 at Deloitte in Boston. I worked at Deloitte for</p> <p>9 approximately three and a half years, between the</p> <p>10 Boston office and the Dallas office.</p> <p>11 And then I began working at Highland Capital</p> <p>12 Management in March of 2009 and I've been at Highland</p> <p>13 since then.</p> <p>14 Q. And when you joined Highland in March of</p> <p>15 2009, what was your title or your role at that time?</p> <p>16 A. My title, if I remember correctly, was</p> <p>17 valuation senior analyst. I'm not certain if that was</p> <p>18 exactly it, but it was something along those lines.</p> <p>19 Q. Was it in the valuation group?</p> <p>20 A. Yes.</p> <p>21 Q. And then give me your -- today you're the CFO</p> <p>22 of Highland; correct?</p> <p>23 A. Correct.</p> <p>24 Q. So give me the progression from valuation</p> <p>25 analyst to CFO with, to the best of your recollection,</p>	7
6	<p>1 the approximate year that you were promoted, et cetera?</p> <p>2 A. Sure. I was in the valuation role for</p> <p>3 basically March of 2009 to end of 2009.</p> <p>4 I was then brought over to what we call the</p> <p>5 corporate accounting team, so doing the accounting for</p> <p>6 Highland Capital Management, LP and of the other</p> <p>7 advisor-type entities, where I was primarily focused on</p> <p>8 budgeting and forecasting, credit facility compliance.</p> <p>9 That took from roughly 2010 until I think</p> <p>10 middle of 2011, at which point I was moved over to the</p> <p>11 fund accounting group, so doing hedge fund accounting,</p> <p>12 which was a short role, really, for probably three or</p> <p>13 four months.</p> <p>14 At which point I was brought back to the</p> <p>15 corporate team and also put in charge of the valuation</p> <p>16 group. I held that role in some way, shape, or form</p> <p>17 more or less continuously for the next several years,</p> <p>18 although certainly my role evolved and changed.</p> <p>19 But in terms of the groups that I had</p> <p>20 oversight over, those were the groups. Like I said, my</p> <p>21 role definitely evolved over time from 2011.</p> <p>22 Q. So by 2017 what was your title?</p> <p>23 A. So, yeah, by that time, I was, I believe,</p> <p>24 controller. I might have still been assistant</p> <p>25 controller.</p>	8
5	<p>1 There were a few title changes in between</p> <p>2 there. I think at one point I was manager, at one</p> <p>3 point I was senior manager, at one point I was</p> <p>4 assistant controller and at one point I was controller.</p> <p>5 I can't remember the exact times of all of</p> <p>6 those break points.</p> <p>7 Q. Let me pause you. When you were assistant</p> <p>8 controller, who was the controller?</p> <p>9 A. There was quite a bit of time where I was</p> <p>10 assistant controller and we didn't have a controller.</p> <p>11 I couldn't tell you the exact time frame, but there was</p> <p>12 definitely an extended time frame.</p> <p>13 And then in April of 2020, our existing chief</p> <p>14 accounting officer left and I assumed his</p> <p>15 responsibilities at that time.</p> <p>16 Q. Let me pause you. That's a new term for me.</p> <p>17 Chief accounting officer?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Who was that person?</p> <p>20 A. The person that left?</p> <p>21 Q. The person that was the chief accounting</p> <p>22 officer until April 2020.</p> <p>23 A. Cliff Stoops.</p> <p>24 Q. And do you have any idea or knowledge whether</p> <p>25 at Highland that was like an officer-level position?</p>	8

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9	<p>1 question.</p> <p>2 THE WITNESS: Very little. Like I said,</p> <p>3 chief accounting officer was more of a term of art.</p> <p>4 What that role actually had oversight of was our retail</p> <p>5 fund accounting, institutional fund accounting,</p> <p>6 operations, so loan settlement and treasury.</p> <p>7 And probably another department or two that</p> <p>8 I'm forgetting, but it did not have any oversight over</p> <p>9 the corporate accounting group.</p> <p>10 Q. (BY MR. RUKAVINA) And in May of 2019, as the</p> <p>11 controller, what were -- what was your role or what</p> <p>12 were your duties?</p> <p>13 A. In May of 2019 I was at that point still</p> <p>14 overseeing the valuation group. I was overseeing the</p> <p>15 corporate accounting group, which my primary direct</p> <p>16 report there was Kristin Hendrix, who really was the</p> <p>17 day-to-day person. But I certainly oversaw her.</p> <p>18 Q. By that you mean the person that answers to</p> <p>19 you?</p> <p>20 A. Correct. Sorry. If I flipped that, I</p> <p>21 apologize. So I was overseeing that group, which had,</p> <p>22 you know, fairly broad responsibilities.</p> <p>23 In terms of, you know, accounting for the</p> <p>24 Advisor, doing forecasts when they were called for,</p> <p>25 performing the audit every year, managing cash,</p>	11
10	<p>1 processing payroll, things of that nature.</p> <p>2 And then at that time I was also put in</p> <p>3 charge of one of the public REITs that was launching at</p> <p>4 the time under the NexPoint flag. And getting that</p> <p>5 team started.</p> <p>6 Q. Did you mention that in May of 2019 you were</p> <p>7 still involved with the valuation group?</p> <p>8 A. I did.</p> <p>9 Q. Did you have a title at the valuation group?</p> <p>10 A. Nothing distinct from my overall controller</p> <p>11 title. These titles were often, like I said, terms of</p> <p>12 art, whether it was controller or chief accounting</p> <p>13 officer.</p> <p>14 Q. What did the valuation group at Highland do?</p> <p>15 A. Well, valuation group was really a liaison</p> <p>16 with both third-party pricing providers, pricing</p> <p>17 services, brokers on the street, front office, members</p> <p>18 at Highland.</p> <p>19 To, you know, to work on valuing the</p> <p>20 securities held across the platform, both for Highland</p> <p>21 HCMLP managed funds as well as affiliated managed</p> <p>22 funds.</p> <p>23 Q. So who did -- did you report to anyone at the</p> <p>24 valuation group? In other words, did it have its own</p> <p>25 separate hierarchy kind of?</p>	12
9	<p>1 A. Frank Waterhouse.</p> <p>2 Q. And were --</p> <p>3 A. I should clarify too, that the valuation team</p> <p>4 isn't ultimately responsible for the valuations</p> <p>5 themselves, but they do act in this liaison role.</p> <p>6 Q. Perhaps that's my confusion. Is there a</p> <p>7 separate group that handles just valuation?</p> <p>8 A. No.</p> <p>9 Q. Is there an outside consultancy that handled</p> <p>10 that in May of 2019?</p> <p>11 A. I don't know if I would call it consultancy,</p> <p>12 but there was a third-party valuation service provider</p> <p>13 that would do certain of the, call it illiquid, harder</p> <p>14 to value securities.</p> <p>15 Q. So would you say that you were pretty busy in</p> <p>16 April, May 2019?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I've been busy throughout my</p> <p>20 career.</p> <p>21 Q. (BY MR. RUKAVINA) In April, May, June 2019,</p> <p>22 how many hours a month do you estimate you worked for</p> <p>23 Highland?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	11

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13	<p>1 question.</p> <p>2 THE WITNESS: I provided many of the same</p> <p>3 services for NexPoint Advisors that I provided for</p> <p>4 Highland, similar types of services.</p> <p>5 Q. (BY MR. RUKAVINA) And briefly about Highland</p> <p>6 Capital Management Fund Advisors, LP, HCMFA, did you</p> <p>7 ever have like an official title or role with that</p> <p>8 entity, to your knowledge?</p> <p>9 A. Again, not that I can remember.</p> <p>10 Q. Not to your knowledge, the controller ever of</p> <p>11 that entity?</p> <p>12 A. I'm not certain whether I was or not.</p> <p>13 Q. But you provided services to that entity as</p> <p>14 part of your role at Highland pursuant to shared</p> <p>15 services?</p> <p>16 A. Similar to NexPoint as I described.</p> <p>17 Q. When you were controller of Highland, was</p> <p>18 that an officer-level position at Highland?</p> <p>19 A. No.</p> <p>20 Q. When did you become the chief financial</p> <p>21 officer of Highland?</p> <p>22 A. Chief financial officer?</p> <p>23 Q. Uh-huh.</p> <p>24 A. 2021, March.</p> <p>25 Q. After Mr. Waterhouse was gone?</p>	15
14	<p>1 A. Yes.</p> <p>2 Q. And I'm going to ask you a little bit about</p> <p>3 your compensation today at Highland.</p> <p>4 You don't have to give me specific numbers</p> <p>5 unless I ask you, please, but I take it you have a base</p> <p>6 compensation?</p> <p>7 A. Yes, I have a base.</p> <p>8 Q. Do you have any bonus structure compensation?</p> <p>9 A. Yes, I have a bonus.</p> <p>10 Q. And what is that bonus number or whether it's</p> <p>11 paid out based upon or contingent upon?</p> <p>12 MR. MORRIS: Objection to the form of the</p> <p>13 question.</p> <p>14 THE WITNESS: As I understand, it's based on</p> <p>15 my offer letter.</p> <p>16 Q. (BY MR. RUKAVINA) On your what?</p> <p>17 A. My letter for extending an offer.</p> <p>18 Q. Tell me, what is your -- without having to</p> <p>19 use express numbers, what is your bonus compensation?</p> <p>20 When is it paid, et cetera?</p> <p>21 A. Yeah, so it's not too dissimilar from the</p> <p>22 prior Highland plan that has semiannual installments</p> <p>23 payable. And then there's a, kind of an end of plan</p> <p>24 bonus when -- I don't remember the specifics on exactly</p> <p>25 what triggers that, but it's back-ended in the plan.</p>	16
13	<p>1 Q. Do you have an expectation as to when the</p> <p>2 winding down and monetization of Highland and its</p> <p>3 assets will be complete?</p> <p>4 A. That's very hard to speculate, especially</p> <p>5 given the amount of litigation that's going on because</p> <p>6 I don't know when that's going to play out and that's a</p> <p>7 material asset.</p> <p>8 Q. Have you discussed with Mr. Seery how long</p> <p>9 that might be?</p> <p>10 A. Not that I can specifically remember.</p> <p>11 Q. Do you believe it will be at least probably</p> <p>12 two years, from today?</p> <p>13 A. I don't know.</p> <p>14 Q. This bonus compensation, does it or any</p> <p>15 amount of it depend on how well Highland or the</p> <p>16 claimant trust, how well they do vis-a-vis collecting</p> <p>17 money from creditors?</p> <p>18 A. Not that I can think of. I'd have to</p> <p>19 probably go back and look and understand the back-end</p> <p>20 piece to say definitively.</p> <p>21 Q. And back-end piece, does that mean whenever</p> <p>22 the winding down is completed?</p> <p>23 A. Yeah, like I said, I'm not exactly -- I'm not</p> <p>24 completely facile with the exact timing, if it's</p> <p>25 completed 100 percent or 80 percent, what kind of</p>	16

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17	<p>1 was that you took exception to the insinuation. Now</p> <p>2 I'd like you to answer my question.</p> <p>3 Which is, sitting here today, do you believe</p> <p>4 that any part of your compensation in the future,</p> <p>5 however long it takes to wind down Highland, is going</p> <p>6 to depend on how well Highland does in these</p> <p>7 litigations concerning the notes?</p> <p>8 A. I believe my ultimate compensation will</p> <p>9 depend on how long this process takes, which I don't</p> <p>10 know, and ultimate recoveries to trust beneficiaries</p> <p>11 under the plan.</p> <p>12 And so I do expect that it will vary, but I</p> <p>13 would reiterate my earlier comment.</p> <p>14 Q. So sitting here today, you understand that if</p> <p>15 the trust beneficiaries recover more, then you might be</p> <p>16 compensated more?</p> <p>17 A. That's possible.</p> <p>18 Q. Well, sir, I'm not trying to be a smart ass,</p> <p>19 but --</p> <p>20 MR. MORRIS: Actually, you're coming awfully</p> <p>21 close, just to be clear, so be careful, because I'm</p> <p>22 offended as well. But continue.</p> <p>23 MR. RUKAVINA: I'm entitled to ask the man</p> <p>24 about his compensation.</p> <p>25 MR. MORRIS: Right. And your clients have</p>	19
18	<p>1 \$75 million, hard dollars at stake in this litigation,</p> <p>2 so we should never believe anything that he says? Is</p> <p>3 that where we are now?</p> <p>4 Q. (BY MR. RUKAVINA) Sir, again, what is your</p> <p>5 bonus compensation as it relates to how well the</p> <p>6 claimant trust does? Do you remember or not?</p> <p>7 A. I don't know that that's even something that</p> <p>8 I could know at this point.</p> <p>9 Q. In preparing for this deposition, I take it</p> <p>10 you spoke to legal counsel, and I'm not entitled to</p> <p>11 know that and I'm not asking that.</p> <p>12 But did you talk to anyone else?</p> <p>13 A. I've spoken in general terms to Mr. Seery.</p> <p>14 Q. Okay. Anyone else?</p> <p>15 A. I've spoken, again in general terms, to</p> <p>16 Kristin Hendrix.</p> <p>17 Q. Anyone else?</p> <p>18 A. Not that I can think of.</p> <p>19 Q. Now, I understand you spoke to Ms. Hendrix</p> <p>20 when legal counsel was present; right?</p> <p>21 A. Yes.</p> <p>22 Q. So let's exclude that conversation.</p> <p>23 Did you have any conversations with</p> <p>24 Ms. Hendrix regarding this deposition or this</p> <p>25 litigation at which counsel was not present?</p>	20
17	<p>1 A. Not in any substance.</p> <p>2 Q. And when do you recall you might have had</p> <p>3 those discussions with her?</p> <p>4 A. I'm not even sure.</p> <p>5 Q. Would it have been recently or like 9,</p> <p>6 10 months ago?</p> <p>7 A. No, it would have been recently.</p> <p>8 Q. And with Mr. Seery, when did you have a</p> <p>9 general conversation with Mr. Seery?</p> <p>10 A. I've had, you know, one or more general</p> <p>11 conversations with Mr. Seery. It's my understanding</p> <p>12 that he was the 30(b)(6) witness, and he had questions</p> <p>13 in preparation for his role in that.</p> <p>14 Q. So that would have been before last Thursday</p> <p>15 that you talked to him? I'll represent to you that</p> <p>16 that's when his deposition was.</p> <p>17 A. Yeah, if I'm accepting that representation,</p> <p>18 yes, prior to.</p> <p>19 Q. Other than that conversation with respect to</p> <p>20 him preparing for the 30(b)(6), did you have a</p> <p>21 discussion with him about this litigation as it might</p> <p>22 relate to your deposition?</p> <p>23 A. I don't believe so in terms of relating to</p> <p>24 this deposition. We've talked at length about the</p> <p>25 notes more generally.</p>	19
18	<p>1 Q. And we'll go through that I'm sure.</p> <p>2 So other than the conversations with</p> <p>3 Ms. Hendrix and Mr. Seery and, of course, with counsel</p> <p>4 that I'm not entitled to know about, did you discuss</p> <p>5 this deposition or what you might be asked today with</p> <p>6 anyone else?</p> <p>7 A. No.</p> <p>8 Q. Okay. Did you read all or any portions of</p> <p>9 the deposition of Frank Waterhouse?</p> <p>10 A. Certainly didn't read all of it. I have a</p> <p>11 general understanding of the topics that were -- that's</p> <p>12 a bad way to frame it.</p> <p>13 I have a general understanding of a few</p> <p>14 points that were covered in his deposition.</p> <p>15 Q. Were you provided -- were you provided the</p> <p>16 exact pages of any of his deposition?</p> <p>17 MR. MORRIS: Objection. Direct him not to</p> <p>18 answer.</p> <p>19 MR. RUKAVINA: You're going to direct him not</p> <p>20 to answer whether he read --</p> <p>21 MR. MORRIS: If you're asking him whether I</p> <p>22 directed him to particular --</p> <p>23 MR. RUKAVINA: I didn't ask that.</p> <p>24 MR. MORRIS: Rephrase your question.</p> <p>25 Q. (BY MR. RUKAVINA) Did you read any pages</p>	20

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21	<p>1 from Mr. Waterhouse's deposition?</p> <p>2 MR. MORRIS: Objection. Asked and answered.</p> <p>3 You can answer again.</p> <p>4 THE WITNESS: I don't recall -- I don't</p> <p>5 recall reading it.</p> <p>6 Q. (BY MR. RUKAVINA) So were you provided a</p> <p>7 summary of his deposition?</p> <p>8 A. I have had discussions with Mr. Morris in</p> <p>9 preparation for this deposition.</p> <p>10 Q. That's fine. And we can stop there.</p> <p>11 Did you read or -- did you read the whole or</p> <p>12 any portion of Mr. Seery's deposition?</p> <p>13 A. No, I don't believe I -- no, I don't believe</p> <p>14 so.</p> <p>15 Q. Is it the same answer, that whatever you</p> <p>16 discussed would have been through counsel?</p> <p>17 A. Yes.</p> <p>18 Q. Did you see any of the videotape of either</p> <p>19 Mr. Waterhouse's or Mr. Seery's deposition?</p> <p>20 A. No.</p> <p>21 Q. So let's talk about the NexPoint</p> <p>22 \$30.7 million note.</p> <p>23 You're familiar with that note; right?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	23	<p>1 was?</p> <p>2 A. Yeah, it was Lauren Thedford, who is Highland</p> <p>3 in-house counsel.</p> <p>4 Q. She's a lawyer?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall from that -- strike that.</p> <p>7 Did you know on or about May 31, 2017 what</p> <p>8 the purpose or reason behind Exhibit 13, this</p> <p>9 promissory note, was?</p> <p>10 MR. MORRIS: Objection to the form of the</p> <p>11 question.</p> <p>12 THE WITNESS: The purpose was to take</p> <p>13 existing notes, which I believe were exclusively demand</p> <p>14 notes, I'm not a hundred percent certain on that, and</p> <p>15 roll them into a single note that would have a 30-year</p> <p>16 amortization period.</p> <p>17 Q. (BY MR. RUKAVINA) Do you know why that was</p> <p>18 done?</p> <p>19 A. I believe it was done probably for a number</p> <p>20 of reasons, one of which was to ensure some level of</p> <p>21 cash flow back to Highland, when I say Highland,</p> <p>22 Highland Capital Management, LP, on an annual basis.</p> <p>23 Q. Was that a concern at Highland Capital</p> <p>24 Management, that it wasn't getting any level of cash</p> <p>25 flow back?</p>
22	<p>1 THE WITNESS: Before I answer that, I'd like</p> <p>2 to see the note.</p> <p>3 Q. (BY MR. RUKAVINA) It's in here. I'm looking</p> <p>4 for the exhibit number. It's in here somewhere.</p> <p>5 A. Yes, I'm familiar with this note.</p> <p>6 Q. Are you familiar with anything having to do</p> <p>7 with the negotiation or execution of this note?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Can you repeat.</p> <p>11 Q. (BY MR. RUKAVINA) Yes. Let me rephrase it.</p> <p>12 Did you have anything to do, back on or about</p> <p>13 May 31, 2017, with the negotiation or execution of this</p> <p>14 promissory note?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Nothing with respect to the</p> <p>18 negotiation --</p> <p>19 Q. (BY MR. RUKAVINA) I'm sorry.</p> <p>20 A. In terms of the execution, I believe I</p> <p>21 coordinated with internal counsel, who drafted the</p> <p>22 note, and I can't remember -- I can't recall one way or</p> <p>23 the other if I assisted in actually physically</p> <p>24 receiving signatures. I just don't remember.</p> <p>25 Q. Do you remember who that internal counsel</p>	24	<p>1 A. It wasn't a concern of mine. I don't know if</p> <p>2 it was a concern of others.</p> <p>3 Q. Do you recall whether any auditor ever raised</p> <p>4 that concern?</p> <p>5 A. The auditors did raise that in conjunction</p> <p>6 with the audit that was concluding around this time.</p> <p>7 So yes, they did raise it, you know, probably in the</p> <p>8 May of 2017 time frame.</p> <p>9 Q. Do you know who decided that it would be a</p> <p>10 30-year term note? By that I mean 30 years.</p> <p>11 A. Jim Dondero.</p> <p>12 Q. Do you know if he decided that in connection</p> <p>13 with discussions with anybody or, to your knowledge, he</p> <p>14 just decided?</p> <p>15 A. As far as I know he just decided it. I</p> <p>16 believe there was a draft at one point that was for</p> <p>17 20 years, and he wanted to do 30.</p> <p>18 Q. So this note is executed in May 31, 2017.</p> <p>19 Did you have any further role prior to, let's say,</p> <p>20 December 1, 2020 with respect to anything to do with</p> <p>21 this promissory note?</p> <p>22 A. Sorry, tell me the date again.</p> <p>23 Q. From execution of the note until December 1,</p> <p>24 2020?</p> <p>25 A. And the question was?</p>

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25	<p>1 Q. Did you have any role in that time frame with                  2 respect to this promissory note on behalf of Highland?                  3 MR. MORRIS: Objection to the form of the                  4 question.                  5 THE WITNESS: I don't know how to answer                  6 that, it's such an open-ended question. I just don't                  7 know how to respond to that.                  8 Q. (BY MR. RUKAVINA) If payments were made on                  9 this note, would you have any duty to record or credit                  10 those payments?                  11 MR. MORRIS: Objection to the form of the                  12 question.                  13 THE WITNESS: I wouldn't have personally in                  14 my role, but my team would have been involved in the                  15 recording of those.                  16 Q. (BY MR. RUKAVINA) And when payments were due                  17 on this note, did you personally have any role with                  18 respect to doing anything to facilitate those payments?                  19 A. When payments were due did I have anything --                  20 yes.                  21 Q. What was your role?                  22 A. So my role, as part of the corporate team,                  23 part of our role is managing cash at the various                  24 entities. So I was involved in weekly cash meetings,                  25 where things like upcoming, whether it's an obligation</p>	27	<p>1 Capital Management or NexPoint Advisors as to a                  2 decision as to whether any prepayments on this note                  3 would ever be made?                  4 MR. MORRIS: Objection to the form of the                  5 question.                  6 THE WITNESS: Can you repeat.                  7 Q. (BY MR. RUKAVINA) Let's start from scratch.                  8 Do you have any memory of any payments being                  9 made on this note, Exhibit 13, prior to their scheduled                  10 dates of payment?                  11 A. There were payments on -- and to be clear,                  12 we're talking about the original 30.7- NexPoint                  13 promissory note? There were payments that I recall                  14 happening throughout 2019 on this note.                  15 Q. And we can look at Exhibit 14.                  16 MR. MORRIS: What number?                  17 MR. RUKAVINA: 14, 1-4.                  18 Q. (BY MR. RUKAVINA) And those are only                  19 numbered because Ms. Hendrix, they were used for her                  20 deposition.                  21 A. Sure. Just trying to keep these in order, I                  22 apologize. Got it.                  23 Q. Do you recognize Exhibit 14?                  24 A. Generally. I can't say that I can verify                  25 that this is completely accurate. But it looks</p>
26	<p>1 or a receipt, would be put on people's radars.                  2 And we would, in connection with the 30-year                  3 notes such as this one from NexPoint, we would either                  4 confer with Jim or -- certainly Jim. Also likely his                  5 accountant.                  6 In terms of teeing them up to make sure that                  7 they were prepared from a cash flow statement to make                  8 the payment.                  9 Q. What do you mean by his accountant?                  10 A. Melissa Schroth.                  11 Q. What do you mean by his? That's a new name                  12 to me. Who is Melissa Schroth?                  13 A. I find it hard to believe that she's a new                  14 name to you. But I think her title was executive                  15 accountant, and she was the keeper of Jim's -- many of                  16 Jim's trusts and personal entities.                  17 Q. Was she a Highland employee?                  18 A. She was. And when I say Highland, I should                  19 be clear, Highland Capital Management, LP.                  20 Q. So when you say Jim's accountant, she was                  21 still a debtor employee, just that she handled                  22 primarily Jim's personal matters?                  23 A. She was still a Highland Capital Management,                  24 LP employee but she did Jim's personal matters.                  25 Q. Did you have any role at either Highland</p>	28	<p>1 familiar to a loan amortization schedule.                  2 Q. Would it have been maintained by Highland?                  3 A. Yes.                  4 Q. And I'll tell you that no one has yet to                  5 authenticate this with a hundred percent precision, so                  6 I'm not asking you to ratify these numbers, but let's                  7 assume that they are what they are.                  8 This does purport to show on the second page                  9 a number of transfers in 2019, which goes along with                  10 your recent answer.                  11 Do you see those, sir?                  12 A. I do.                  13 Q. In particular, 750,000, then 1.3 million,                  14 300,000, 2.1 million, 630,000, 1.3 million.                  15 You see all those, sir?                  16 A. Yes, I see every one.                  17 Q. Do you have any memory, without going into                  18 those transfers of those dates to the dollar, do you                  19 have any memory that those transfers were made?                  20 A. Yes. Again, not a specific recollection of                  21 where I was at the time, but yes, I know that these                  22 transfers were made.                  23 Q. Do you know why they were made in those                  24 amounts and on those dates?                  25 A. No, not without speculating.</p>

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29	<p>1 Q. What would be your speculation if you were to                  2 speculate?                  3 A. My speculation would be that it would be for                  4 liquidity needs at HCMLP, Highland Capital Management,                  5 LP, needing liquidity to operate. Again, that's                  6 speculation. I don't know for a fact that that's true,                  7 but that's what I would assume.                  8 Q. Who would have made those decisions in 2019                  9 to transfer those funds?                  10 MR. MORRIS: Objection to the form of the                  11 question.                  12 THE WITNESS: Yeah, it would have been either                  13 Frank or Jim. I can't say with certainty, but one of                  14 the two. When I say Jim, I should be clear,                  15 Mr. Dondero.                  16 Q. (BY MR. RUKAVINA) Between January and                  17 July 2019, do you have any recollection that there was                  18 any particular liquidity issue or need at Highland                  19 Capital Management?                  20 A. Yeah, Highland was dealing with liquidity                  21 problems throughout 2019. Maybe not every single day                  22 of the year, but we were continuously needing to bridge                  23 liquidity.                  24 Q. And you joined Highland in 2009. From that                  25 point in time, 2009, through 2019, was there any</p>	31	<p>1 them had been made and you executed them?                  2 A. Both, depending on the circumstances.                  3 Q. So sometimes you would be brought into a                  4 discussion?                  5 A. Yes.                  6 Q. And can you think of any particular example?                  7 A. Of when I was brought into the discussion of                  8 whether to transfer? I can't think of an individual                  9 example but we met quite regularly with Jim on cash.                  10 So to the extent that either he needed cash                  11 on one of his entities, he might let us know that. Or                  12 to the extent that Highland needed cash, we might let                  13 him know that and ask for basically his assistance in                  14 helping us to meet our own cash needs.                  15 Q. And did he usually find a way to facilitate                  16 the cash need either at one of his entities or at                  17 Highland?                  18 A. I suppose until October 16 of 2019.                  19 Q. Yes. Prior to bankruptcy, do you recall any                  20 instance where one entity wasn't able to transfer funds                  21 to another for liquidity purposes?                  22 A. I can't think of a specific situation. But                  23 I'm sure there were situations where -- you know, cash                  24 was always something that was being juggled, so I don't                  25 know that necessarily liquidity could be met the same</p>
30	<p>1 practice at the enterprise of those businesses to                  2 transfer funds between each other on a basis of when                  3 one needed it and one had it?                  4 A. Yes, that was a fairly, generally speaking,                  5 that was a fairly common practice, of using different                  6 entities within the overall structure to bridge                  7 liquidity.                  8 Q. Would that have been Mr. Dondero who, in the                  9 final analysis, would have made those decisions?                  10 A. Maybe not a hundred percent, but I'd say                  11 the -- if not a hundred percent, certainly most.                  12 Q. And who else might have participated,                  13 Mr. Waterhouse?                  14 A. Potentially Mr. Waterhouse. And the reason I                  15 hedge on that a little bit is I don't think Frank would                  16 have made any of these decisions on his own either.                  17 But I may have heard them from Frank via Jim.                  18 Q. So in those same years, were you ever asked                  19 by Mr. Dondero or Mr. Waterhouse as to whether funds                  20 should be transferred from one entity to another for                  21 liquidity purposes?                  22 A. Can you ask that again, please.                  23 Q. Yes. Trying to understand, were you part of                  24 those discussions as to whether these transfers should                  25 be made, or did you just learn that a decision to make</p>	32	<p>1 day.                  2 But eventually we were able to manage through                  3 those situations, you know, oftentimes through some of                  4 these loans.                  5 Q. In instances that you may remember when                  6 Highland Capital Management needed liquidity, do you                  7 know how Mr. Dondero decided from which other entity to                  8 transfer the cash?                  9 A. I can't step into his brain and think about                  10 his decision-making process, but if I was going to                  11 oversimplify it I would speculate that it would be                  12 based on who has cash in that moment.                  13 Q. Would he ask you or someone on your team who                  14 had cash?                  15 A. At times, depending on which entity we're                  16 talking about. Because my team certainly didn't have                  17 responsibility for every single entity in the                  18 enterprise, but we did have responsibility for some.                  19 Q. And if your team -- so -- strike that.                  20 So over the general -- talking about                  21 generally now, over those 10 years when there were                  22 these intercompany transfers for liquidity purposes,                  23 how were they booked by the debtor, by Highland Capital                  24 Management?                  25 MR. MORRIS: Objection to the form of the</p>

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33	<p>1 question.</p> <p>2 THE WITNESS: Help me on the direction. So</p> <p>3 this is money that Highland is receiving or money that</p> <p>4 Highland is sending?</p> <p>5 Q. (BY MR. RUKAVINA) Sending out.</p> <p>6 A. Sending out. So this is -- in the scenario</p> <p>7 that you're describing, this money that Highland is</p> <p>8 sending out to meet some other corporate obligor's</p> <p>9 liquidity needs?</p> <p>10 Q. Yes, sir.</p> <p>11 A. So those would be booked as a loan. I</p> <p>12 would -- I need to hedge a little bit because I'm not</p> <p>13 a hundred percent certain, but I would say if not</p> <p>14 exclusively via loans close to exclusively.</p> <p>15 Q. And would they -- strike that.</p> <p>16 Would they usually be papered up with a</p> <p>17 promissory note?</p> <p>18 A. Yes.</p> <p>19 Q. Now, why was that the general course during</p> <p>20 10 years? Was there a policy and procedure in place,</p> <p>21 or would Dondero say book it as a loan, or was that</p> <p>22 just the right thing to do from an accounting</p> <p>23 perspective?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	35
34	<p>1 THE WITNESS: At the end of the day it's at</p> <p>2 the direction of Jim Dondero, so I can't tell you</p> <p>3 exactly why he wanted it to be done that way. But that</p> <p>4 was certainly the practice of how it was done in those</p> <p>5 situations.</p> <p>6 Q. (BY MR. RUKAVINA) To your knowledge, did Jim</p> <p>7 Dondero ever tell you or anyone else that when Highland</p> <p>8 is transferring funds to one of his affiliated entities</p> <p>9 that it should always be booked as a loan?</p> <p>10 A. So remembering 10 years' worth of</p> <p>11 conversations, I can't remember a specific instance</p> <p>12 where he would have said, always book every single</p> <p>13 transaction I direct you to do as a loan. However,</p> <p>14 that was the practice.</p> <p>15 Q. Different question.</p> <p>16 Do you remember that in each instance, and</p> <p>17 again, that might be unfair over 10 years, but do you</p> <p>18 remember in each instance when Mr. Dondero said</p> <p>19 transfer money from Highland to this other entity for</p> <p>20 liquidity needs that he said book it as a loan?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: I can't recall with any</p> <p>24 specificity what he may or may not have specifically</p> <p>25 said so long ago.</p>	36
35	<p>1 Q. (BY MR. RUKAVINA) To your knowledge, was</p> <p>2 there any written policy or procedure in place at</p> <p>3 Highland Capital Management with respect to how</p> <p>4 transfers from Highland to an affiliated entity should</p> <p>5 be booked or treated?</p> <p>6 A. No written policy or procedure that I'm aware</p> <p>7 of.</p> <p>8 Q. Is it fair to say that by May 2019, the</p> <p>9 corporate accounting group had handled so many of these</p> <p>10 transfers that it believed that if Highland was</p> <p>11 transferring funds to another affiliated entity, it's</p> <p>12 probably a loan?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: Yeah, I don't know that I can</p> <p>16 answer that in terms of the corporate accounting team.</p> <p>17 That just feels way too broad.</p> <p>18 It was certainly the practice that when</p> <p>19 somebody needed liquidity and it was appropriate from an</p> <p>20 accounting perspective, that's how it would be booked.</p> <p>21 And there was no reason to doubt that that was</p> <p>22 the appropriate way to do it, particularly with</p> <p>23 direction from either Frank or Jim.</p> <p>24 Q. (BY MR. RUKAVINA) Is it your testimony that</p> <p>25 in each instance that happened, that either Frank or</p>	36
36	<p>1 Jim said, this is a loan, the "this" being the transfer</p> <p>2 from Highland to an affiliated entity for liquidity</p> <p>3 purposes?</p> <p>4 MR. MORRIS: Objection to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: I can't recall with that level</p> <p>7 of specificity if those words came out of Jim's mouth.</p> <p>8 But with 0 percent doubt in my mind, every single one</p> <p>9 of those loans was done with the authority of Jim or</p> <p>10 Frank, or both.</p> <p>11 Q. (BY MR. RUKAVINA) So going back to this</p> <p>12 Exhibit 14, now I'm going to ask you about these</p> <p>13 payments coming in.</p> <p>14 Assuming that these payments were actually</p> <p>15 made in 2019 --</p> <p>16 And I think, John, you sent me this morning,</p> <p>17 or maybe last night, some bank statements?</p> <p>18 MR. MORRIS: I actually sent all of the</p> <p>19 backup for all payments made, I think, under the notes</p> <p>20 at issue a week or two ago.</p> <p>21 Q. (BY MR. RUKAVINA) How would -- so assuming</p> <p>22 that these payments in 2019 that NexPoint made didn't</p> <p>23 technically have to be made at that point in time, how</p> <p>24 would Highland have booked these payments?</p> <p>25 A. So I can't tell the column headers, so you'll</p>	36



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37	<p>1 have to excuse me if I flip them.</p> <p>2 Q. They'll be on the first page. Rip the page</p> <p>3 off if you need to.</p> <p>4 A. First one is interest, second one is</p> <p>5 principal. On the far right is the actual amount of</p> <p>6 the payment. So, for example, March 29, 750,000.</p> <p>7 And the -- the column that has the negative</p> <p>8 411,000 is the application of interest and the 338-</p> <p>9 the application of principal.</p> <p>10 Q. So again, if Highland -- strike that.</p> <p>11 If NexPoint made a payment that was not</p> <p>12 technically due at that point in time, it would be</p> <p>13 recorded as payments on principal and interest?</p> <p>14 A. It would be recorded as it's reflected in the</p> <p>15 schedule. So there's an application of interest and an</p> <p>16 application of principal.</p> <p>17 Q. So based on your understanding and</p> <p>18 experience, if that payment wasn't due at that time,</p> <p>19 would it have been a prepayment by NexPoint?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: Yeah, I'm not sure that it's a</p> <p>23 prepayment or not. It's certainly a payment. It's</p> <p>24 certainly voluntary. It's not spelled out under the</p> <p>25 schedule. I don't know that it's a per se, capital P,</p>	39
38	<p>1 prepayment. I'm just not certain.</p> <p>2 Q. (BY MR. RUKAVINA) Well, maybe without</p> <p>3 respect to these specific transfers.</p> <p>4 Generally, generally, if one of the Dondero</p> <p>5 affiliates made a payment that wasn't scheduled, how</p> <p>6 would the debtor have accounted for that payment?</p> <p>7 A. It would have recorded the payment as a</p> <p>8 reduction to either or both outstanding accrued</p> <p>9 interest or principal.</p> <p>10 Q. You wouldn't call those prepayments?</p> <p>11 A. I don't know the definition of prepayment.</p> <p>12 It's a payment. It's off schedule, but I don't know</p> <p>13 whether it's a per se prepayment.</p> <p>14 Q. Would that be something in your experience</p> <p>15 that we would look at the promissory note to maybe</p> <p>16 determine?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I don't know.</p> <p>20 Q. (BY MR. RUKAVINA) Well, remember, I'm asking</p> <p>21 you the same question just in different ways.</p> <p>22 Who decides at the debtor, or how does the</p> <p>23 debtor decide, if an unscheduled payment is made, how</p> <p>24 to apply it?</p> <p>25 MR. MORRIS: Objection to the form of the</p>	40
37	<p>1 question.</p> <p>2 Q. (BY MR. RUKAVINA) And his objection is</p> <p>3 valid. And just to give you a little bit of a fine</p> <p>4 point, does someone look at the promissory note to</p> <p>5 decide that? Or is there some other rule or procedure</p> <p>6 that someone looks at?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: So the person -- I don't know</p> <p>10 that I can specifically name a person because the role</p> <p>11 probably changed over time.</p> <p>12 But either our corporate accountant, or the</p> <p>13 corporate accountant's boss, which was Kristin Hendrix</p> <p>14 for years, would have been responsible for recording and</p> <p>15 tracking those payments.</p> <p>16 So some combination of the corporate</p> <p>17 accountant and Kristin would have applied those</p> <p>18 payments, and that rolls up through my and Frank's</p> <p>19 review ultimately.</p> <p>20 Q. (BY MR. RUKAVINA) So if I can round off this</p> <p>21 discussion, I think you told me a few minutes ago that</p> <p>22 in each instance that Highland was transferring money</p> <p>23 out to an affiliate.</p> <p>24 Whether or not you remember Dondero or</p> <p>25 Waterhouse saying it's a loan, it would have been a</p>	40
38	<p>1 loan because that's how it always was and it was always</p> <p>2 authorized. Generally correct?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: There were a few "always" and</p> <p>6 "generally" in there. And like I said, when it came</p> <p>7 to liquidity needs, my recollection is that these would</p> <p>8 be handled via loans.</p> <p>9 Q. (BY MR. RUKAVINA) And in reverse, if a</p> <p>10 Dondero entity made a payment prior to a scheduled</p> <p>11 payment on a note, generally there would be credit</p> <p>12 against principal and/or interest provided on that</p> <p>13 note?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: Generally speaking, yes, if the</p> <p>17 payment was for payment on the note.</p> <p>18 Q. (BY MR. RUKAVINA) Well, that goes back to my</p> <p>19 question.</p> <p>20 Do you know how these payments on Exhibit 14</p> <p>21 in 2019 were determined to be payments on these notes,</p> <p>22 as opposed to a transfer from NexPoint to Highland for</p> <p>23 some other reason?</p> <p>24 A. What other reason would it be, if I can be so</p> <p>25 bold.</p>	40

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41	<p>1 Q. Can you think of any other reason in 2019?</p> <p>2 A. Well, Highland had -- Highland had shared</p> <p>3 services and intercompany agreements with NexPoint, at</p> <p>4 this time.</p> <p>5 But these were not payments that could</p> <p>6 possibly be confused with those payments. These are</p> <p>7 off cycle, they're larger amounts, and there's nothing</p> <p>8 that they could be other than payments against the</p> <p>9 loan.</p> <p>10 Q. So I asked you before, and I think you said</p> <p>11 that you were speculating with respect to these</p> <p>12 payments, that Highland needed money at that time.</p> <p>13 Do you recall in 2019 any discussions with</p> <p>14 anyone, Dondero or Waterhouse, to the effect that</p> <p>15 NexPoint has excess cash so maybe NexPoint should</p> <p>16 transfer some money to Highland?</p> <p>17 MR. MORRIS: Objection. Asked and answered.</p> <p>18 THE WITNESS: Do I still answer?</p> <p>19 Q. (BY MR. RUKAVINA) Yes.</p> <p>20 MR. MORRIS: Yes.</p> <p>21 THE WITNESS: And sorry, I got lost there.</p> <p>22 Q. (BY MR. RUKAVINA) Yes. So my predicate was</p> <p>23 you testified before that you were assuming that these</p> <p>24 payments were because of a cash need at Highland;</p> <p>25 right?</p>	43
42	<p>1 A. Correct.</p> <p>2 Q. So with that predicate my question is, do you</p> <p>3 recall discussing with Dondero or Waterhouse or with</p> <p>4 anyone as to why NexPoint would be transferring money</p> <p>5 to Highland at that time?</p> <p>6 A. Yes, I would have had conversations with</p> <p>7 Mr. Dondero or Mr. Waterhouse.</p> <p>8 Q. And do you remember specifically in 2019 why</p> <p>9 these transfers were made from NexPoint as opposed to</p> <p>10 some other Dondero entity?</p> <p>11 A. Not with specificity, but certainly NexPoint</p> <p>12 was generating cash at that time, and had the ability</p> <p>13 to assist with Highland's liquidity.</p> <p>14 Q. So sitting here today, you've told me</p> <p>15 generally and logically that you have no specific</p> <p>16 memory why between January 2019 and August 2019, any of</p> <p>17 these payments on Exhibit 14 were made by NexPoint?</p> <p>18 A. I have no specific memory, but I would say</p> <p>19 with certainty that most or all of this was driven by</p> <p>20 Highland HCMLP liquidity needs.</p> <p>21 Q. And most or all of this would have been</p> <p>22 Highland in the first instance going to NexPoint and</p> <p>23 saying, hey, can you send us some cash?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	44
41	<p>1 THE WITNESS: Yeah, the premise of that,</p> <p>2 given that Mr. Dondero is in control of both sides,</p> <p>3 it's a faulty premise.</p> <p>4 Q. (BY MR. RUKAVINA) But you told me not that</p> <p>5 long ago that in these weekly cash meetings that it</p> <p>6 would be your team at Highland who would go to</p> <p>7 Mr. Dondero and say Highland has a liquidity issue.</p> <p>8 So wouldn't that liquidity issue have</p> <p>9 originated with the Highland team?</p> <p>10 A. Mr. Dondero is the president of Highland.</p> <p>11 He's the president of NexPoint. We're employees of</p> <p>12 Highland. We're also shared services providers for</p> <p>13 NexPoint.</p> <p>14 The waters are very muddy in terms of who is</p> <p>15 wearing what hat in that conversation.</p> <p>16 Q. But Mr. Dondero doesn't know that Highland</p> <p>17 has a liquidity issue unless someone from the corporate</p> <p>18 accounting group tells him, does he?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question. I hope that's not the case.</p> <p>21 THE WITNESS: He has the ability to know what</p> <p>22 our cash position is at any given time, at that time.</p> <p>23 Q. (BY MR. RUKAVINA) So why would you have</p> <p>24 these weekly cash meetings with Mr. Waterhouse and</p> <p>25 sometimes Mr. Dondero?</p>	42
42	<p>1 A. So these were cash forecasts, looking at</p> <p>2 outlook. I can tell you almost without exception,</p> <p>3 maybe -- with maybe without exception, be speculating,</p> <p>4 but those forecasts would be showing negative numbers</p> <p>5 at Highland, virtually nonstop.</p> <p>6 And so it was important, my opinion, but it</p> <p>7 was probably important to Frank to make sure that he</p> <p>8 was getting in front of Jim to make sure that those</p> <p>9 needs were being addressed timely.</p> <p>10 Q. So I've asked that question. I want to ask</p> <p>11 you a different question.</p> <p>12 For any of these payments between</p> <p>13 January 2019 and August 2019 reflected on Exhibit 14,</p> <p>14 do you have any personal knowledge as to whether they</p> <p>15 were intended to be prepayments or not?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: I don't know whether they were</p> <p>19 intended to be prepayments at that time.</p> <p>20 Q. (BY MR. RUKAVINA) Sitting here today, seeing</p> <p>21 this document as a CPA and as a sophisticated person,</p> <p>22 do you read this Exhibit 14 to indicate that those</p> <p>23 payments were booked as prepayments?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>	43

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45	<p>1 THE WITNESS: Again, the term "prepayments"</p> <p>2 is the one I'm struggling with. I can ascertain that</p> <p>3 there are payments and they're off schedule. But I</p> <p>4 don't know that I can ascertain that they're</p> <p>5 prepayments.</p> <p>6 Q. (BY MR. RUKAVINA) Well, if a borrower makes</p> <p>7 a payment that's ahead of schedule, how would that</p> <p>8 generally be accounted for?</p> <p>9 MR. MORRIS: Objection to the form of the</p> <p>10 question.</p> <p>11 THE WITNESS: It would be accounted for as a</p> <p>12 reduction of principal or interest or some combination</p> <p>13 of the two.</p> <p>14 Q. (BY MR. RUKAVINA) Which would relieve the</p> <p>15 borrower of having to make that at some point in the</p> <p>16 future; right?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: No. The borrower still owes</p> <p>20 the money. This is showing 23-point -- pick a date.</p> <p>21 May 31, 23.034-. That there's significant obligations</p> <p>22 that are still outstanding.</p> <p>23 Q. (BY MR. RUKAVINA) So on June 4, 2019 -- I'm</p> <p>24 sorry, on June 19, 2019, the borrower made a</p> <p>25 \$2.1 million payment. That's what this shows; correct?</p>	47	<p>1 that the maker may pay outstanding accrued interest, or</p> <p>2 unpaid principal.</p> <p>3 Q. (BY MR. RUKAVINA) But my question is, as I</p> <p>4 understand accrued interest, it means interest that has</p> <p>5 already occurred or accrued as of the date, like</p> <p>6 today's date; right?</p> <p>7 A. Uh-huh.</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 Q. (BY MR. RUKAVINA) Do you agree with that?</p> <p>11 Do you agree with that? Accrued interest</p> <p>12 means interest that has already come due, that has</p> <p>13 actually happened because interest happens over time.</p> <p>14 A. Accrued interest --</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 Q. (BY MR. RUKAVINA) Why don't you start. Why</p> <p>18 don't you define for me accrued interest.</p> <p>19 A. Sure. Accrued interest would be outstanding</p> <p>20 and unpaid interest that -- sorry, it's hard to define</p> <p>21 it without using the term. But it's interest that's</p> <p>22 accumulated in respect of a principal amount through a</p> <p>23 given date.</p> <p>24 Q. So how do you prepay accrued interest?</p> <p>25 A. How do you prepay accrued interest. Again,</p>
46	<p>1 A. I see that.</p> <p>2 Q. You're not saying that the borrower would</p> <p>3 ever have to make that same \$2.1 million payment again,</p> <p>4 are you?</p> <p>5 A. No. What I'm saying is, based on that 2.1-</p> <p>6 payment -- and this is reading this cold.</p> <p>7 But based on that 2.1- payment, 66,000 was</p> <p>8 applied to interest, which left zero accrued interest</p> <p>9 outstanding. 2.03- applied to principal, which left</p> <p>10 24.7- and change still outstanding.</p> <p>11 Q. Well, I'm going to ask you about the</p> <p>12 promissory note then, Exhibit 13, in particular</p> <p>13 Section 3, where it says prepayment allowed.</p> <p>14 And the first sentence says, may or -- pardon</p> <p>15 me, maker may prepay in whole or in part the unpaid</p> <p>16 principal or accrued interest of this note.</p> <p>17 Do you see that, sir?</p> <p>18 A. Yes, I see that.</p> <p>19 Q. In your experience, can someone prepay</p> <p>20 accrued interest?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: The document reads, maker may</p> <p>24 prepay in whole or in part the unpaid principal or</p> <p>25 accrued interest of this note. So I read that to say</p>	48	<p>1 that's a little bit of a mental jumble.</p> <p>2 Q. Exactly.</p> <p>3 A. Well, what I'm...</p> <p>4 Q. To me one pays accrued interest. But this</p> <p>5 note says you can prepay accrued interest. So I'm just</p> <p>6 seeing whether you as a CPA, CFO and controller for</p> <p>7 years agrees that one can prepay accrued interest?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Frankly, I don't know if it's</p> <p>11 possible. That's not how I'm seeing it applied here,</p> <p>12 based on the quick review of Exhibit 14.</p> <p>13 Q. (BY MR. RUKAVINA) Well, the next sentence</p> <p>14 says, any payments on this note shall be applied first</p> <p>15 to unpaid accrued interest hereon, and then to unpaid</p> <p>16 principal hereof.</p> <p>17 Do you see that, sir?</p> <p>18 A. I see that.</p> <p>19 Q. Do you have any understanding based either on</p> <p>20 your personal knowledge or in your expertise as a CPA</p> <p>21 and a CFO as to what that sentence means?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: The way that I would read that</p> <p>25 would be that for a payment, for example, pick a date,</p>

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49	<p>1 Exhibit 14 again, the \$2.1 million payment on or about                  2 June 19. I see that a payment was made.                  3 And it was -- it appears that there was                  4 accrued and unpaid interest at that time of 66,000. And                  5 so the first 66,000 was applied to outstanding accrued                  6 interest, to bring the balance to zero.                  7 And the difference between that 66,000 and the                  8 2.1 million was applied to principal.                  9 <b>Q. (BY MR. RUKAVINA) Do you believe, whether</b>                  10 <b>from personal knowledge from this note, Exhibit 13, or</b>                  11 <b>your experience at Highland or as a CPA, that one can</b>                  12 <b>say that interest, accrued interest will be due on a</b>                  13 <b>future date, it will accrue by that date, but I'm going</b>                  14 <b>to pay it earlier as of that date?</b>                  15 <b>MR. MORRIS:</b> Objection to the form of the                  16 question.                  17 <b>THE WITNESS:</b> If I can rephrase back to you                  18 just so I make sure I'm understanding the question.                  19 You're saying could someone say, I would like to prepay                  20 interest into the future. It hasn't accrued yet, but                  21 it will be accrued by end of year.                  22 And I would like to be prepaid effectively                  23 with respect to that interest, and then have the                  24 remainder used to pay down principal.                  25 The question is, can someone do that?</p>	51
50	<p>1 <b>Q. (BY MR. RUKAVINA) Yes.</b>                  2 <b>MR. MORRIS:</b> I object to the question.                  3 <b>THE WITNESS:</b> I suppose it's possible, but                  4 that certainly wasn't the practice if that makes sense.                  5 <b>Q. (BY MR. RUKAVINA) That does make sense. I'm</b>                  6 <b>still struggling, and again, I'm not trying to be a</b>                  7 <b>smart aleck. I'm still struggling with the first</b>                  8 <b>sentence of paragraph 3, that maker may prepay accrued</b>                  9 <b>interest.</b>                  10 <b>And it sounds like to me like you don't</b>                  11 <b>necessarily have a definitive answer as to what that</b>                  12 <b>might have meant either.</b>                  13 <b>MR. MORRIS:</b> Objection to the form of the                  14 question.                  15 <b>THE WITNESS:</b> I think the document speaks for                  16 itself in that sentence.                  17 <b>Q. (BY MR. RUKAVINA) But have you seen</b>                  18 <b>something like this, to your recollection, in other</b>                  19 <b>Highland promissory notes?</b>                  20 <b>A. Something like what?</b>                  21 <b>Q. Prepaying accrued interest.</b>                  22 <b>A. Yes, I have seen that.</b>                  23 <b>Q. What's your memory? Where have you seen</b>                  24 <b>that?</b>                  25 <b>A. I can't remember a specific note, but I</b></p>	52
49	<p>1 believe that has been done in a specific circumstance.                  2 <b>Q. So at least at Highland, you would believe</b>                  3 <b>that that phrase, prepaying accrued interest, had some</b>                  4 <b>established meaning at Highland?</b>                  5 <b>MR. MORRIS:</b> Objection to the form of the                  6 question.                  7 <b>THE WITNESS:</b> No, I don't agree with that.                  8 <b>Q. (BY MR. RUKAVINA) Okay. You understand, of</b>                  9 <b>course, that it's Highland's position that with respect</b>                  10 <b>to this note, a payment was due on December 31 of 2020</b>                  11 <b>that wasn't made; correct?</b>                  12 <b>A. Yes, it's my understanding -- if I can state</b>                  13 <b>it back just so I make sure I'm getting it correctly.</b>                  14 <b>It's my understanding that there was a payment due on</b>                  15 <b>December 31, 2020, that wasn't made timely, yes.</b>                  16 <b>Q. Okay. Do you know why that payment wasn't</b>                  17 <b>made timely?</b>                  18 <b>A. By recollection, because Mr. Dondero had</b>                  19 <b>directed people not to process payments from Highland</b>                  20 <b>affiliates to Highland.</b>                  21 <b>Q. When did you learn of that?</b>                  22 <b>A. Early December 2020.</b>                  23 <b>Q. How did you learn of that?</b>                  24 <b>A. I don't specifically remember the</b>                  25 <b>conversation, but I know I had conversations with both</b></p>	51
50	<p>1 <b>Kristin and Frank. I can't remember if those were</b>                  2 <b>individual or collective, but we understood that to be</b>                  3 <b>the marching orders.</b>                  4 <b>Q. Did you hear Mr. Dondero say anything like</b>                  5 <b>that?</b>                  6 <b>A. I did not.</b>                  7 <b>Q. Did Mr. Waterhouse tell you that Mr. Dondero</b>                  8 <b>said something like that to him?</b>                  9 <b>A. Yes.</b>                  10 <b>Q. Okay. Separately, do you remember whether</b>                  11 <b>Ms. Hendrix told you that Mr. Waterhouse told her that,</b>                  12 <b>or would it have been kind of at the same meeting?</b>                  13 <b>A. I don't remember specifically. It would have</b>                  14 <b>been all around the same time.</b>                  15 <b>Q. And to the best of your recollection, what</b>                  16 <b>words -- strike that.</b>                  17 <b>To the best of your recollection, did</b>                  18 <b>Mr. Waterhouse include a reference to promissory notes</b>                  19 <b>and the Advisors when he said that Dondero told him not</b>                  20 <b>to make payments?</b>                  21 <b>MR. MORRIS:</b> Objection to the form of the                  22 question.                  23 <b>THE WITNESS:</b> I don't remember the specific                  24 words that Mr. Waterhouse used. My clear impression                  25 was that it was a very global instruction.</p>	52

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53	<p>1 And I should clarify also that, you know, at</p> <p>2 this time, I think as we covered in my background.</p> <p>3 At this point I had assumed the chief</p> <p>4 accounting officer role, so I wasn't necessarily in</p> <p>5 the -- in as much of the chain of command as I had been</p> <p>6 previously to taking that role, where that sort of thing</p> <p>7 might have come from Frank, to me, to Kristin.</p> <p>8 By this time, Frank and Kristin were</p> <p>9 communicating and I was sometimes in the loop, sometimes</p> <p>10 not.</p> <p>11 <b>Q. (BY MR. RUKAVINA) Did Mr. Waterhouse tell</b></p> <p>12 <b>you why Dondero had told him that?</b></p> <p>13 <b>A. I don't remember with any specificity.</b></p> <p>14 <b>However, my perception at the time was that at this</b></p> <p>15 <b>time the relationship between Mr. Dondero and Mr. Seery</b></p> <p>16 <b>was hopelessly broken, and that this was Jim Dondero,</b></p> <p>17 <b>you know, gearing up for a fight in the future.</b></p> <p>18 <b>Q. Prior to December of 2020, had you prepared a</b></p> <p>19 <b>report showing potential overpayments that NexPoint and</b></p> <p>20 <b>HCMFA had made on account of shared services and</b></p> <p>21 <b>payroll reimbursement?</b></p> <p>22 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>23 question.</p> <p>24 You can answer.</p> <p>25 <b>THE WITNESS:</b> I know the analysis that you're</p>	55	<p>1 analysis, right or wrong, suggested that the Advisors</p> <p>2 had made large overpayments?</p> <p>3 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>4 question.</p> <p>5 <b>THE WITNESS:</b> No, that's incorrect.</p> <p>6 <b>Q. (BY MR. RUKAVINA) Why is that incorrect?</b></p> <p>7 <b>A. Because by recollection, to the best of my</b></p> <p>8 <b>recollection, that analysis didn't occur until after</b></p> <p>9 <b>Dondero had told Frank no more payments.</b></p> <p>10 <b>Q. Is that the only reason why you might suspect</b></p> <p>11 <b>that what I just said was incorrect?</b></p> <p>12 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>13 question.</p> <p>14 <b>THE WITNESS:</b> Yeah, I don't know how to</p> <p>15 answer that.</p> <p>16 <b>Q. (BY MR. RUKAVINA) I'm going back, when I</b></p> <p>17 <b>asked you, did Waterhouse tell you why Dondero gave the</b></p> <p>18 <b>direction, you said no.</b></p> <p>19 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>20 question.</p> <p>21 <b>THE WITNESS:</b> Sorry, I'm not sure. If I</p> <p>22 could have the question asked again, I'd be happy to</p> <p>23 answer.</p> <p>24 <b>Q. (BY MR. RUKAVINA) I'll ask it again.</b></p> <p>25 <b>Mr. Waterhouse tells you that Mr. Dondero</b></p>
54	<p>1 talking about. I would not characterize it the way</p> <p>2 that you characterized it.</p> <p>3 <b>Q. (BY MR. RUKAVINA) And we'll talk about this</b></p> <p>4 <b>more in November, so I really don't want to go into any</b></p> <p>5 <b>detail, unless you feel the need to.</b></p> <p>6 <b>But, so you did not prepare that analysis?</b></p> <p>7 <b>MR. MORRIS:</b> Objection to the form of the</p> <p>8 question.</p> <p>9 <b>THE WITNESS:</b> I prepared an analysis that</p> <p>10 differed from how you described it.</p> <p>11 <b>Q. (BY MR. RUKAVINA) How would you describe it,</b></p> <p>12 <b>in a nutshell?</b></p> <p>13 <b>A. I would describe it as I was asked to refresh</b></p> <p>14 <b>a spreadsheet using certain assumptions, based on the</b></p> <p>15 <b>direction of Frank Waterhouse, and I updated and I sent</b></p> <p>16 <b>him an email.</b></p> <p>17 <b>Q. Do you have any understanding that that</b></p> <p>18 <b>analysis was then shared with Mr. Dondero by</b></p> <p>19 <b>Mr. Waterhouse?</b></p> <p>20 <b>A. I know that now. I didn't know that at the</b></p> <p>21 <b>time.</b></p> <p>22 <b>Q. Do you have any understanding -- strike that.</b></p> <p>23 <b>Did you have any understanding that as of</b></p> <p>24 <b>early December 2020 the reason why Mr. Dondero said</b></p> <p>25 <b>what he said to Mr. Waterhouse was because that</b></p>	56	<p>1 basically said no more payments; right?</p> <p>2 <b>A. Yes.</b></p> <p>3 <b>Q. And, but he did not tell you why Mr. Dondero</b></p> <p>4 <b>said that?</b></p> <p>5 <b>A. Not that I can recall.</b></p> <p>6 <b>Q. So he might have?</b></p> <p>7 <b>A. He might have. I don't specifically</b></p> <p>8 <b>remember.</b></p> <p>9 <b>Q. Do you recall asking him or anyone else why</b></p> <p>10 <b>Dondero would have said that?</b></p> <p>11 <b>MR. MORRIS:</b> Objection. Asked and answered.</p> <p>12 <b>THE WITNESS:</b> I don't recall specifically</p> <p>13 asking.</p> <p>14 <b>Q. (BY MR. RUKAVINA) Do you recall telling</b></p> <p>15 <b>Mr. Seery that Dondero said anything like that?</b></p> <p>16 <b>A. At what point in time?</b></p> <p>17 <b>Q. Prior to December 31, 2020.</b></p> <p>18 <b>A. No, I did not. I did not say that to</b></p> <p>19 <b>Mr. Seery.</b></p> <p>20 <b>Q. In your mind was there any present</b></p> <p>21 <b>understanding or concern that NexPoint therefore</b></p> <p>22 <b>wouldn't make a scheduled December 31, 2020, payment?</b></p> <p>23 <b>A. Was there any concern that they wouldn't?</b></p> <p>24 <b>Q. Yeah.</b></p> <p>25 <b>A. I would never use the word "concern." At</b></p>

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57	<p>1 that point I wasn't even on the team anymore, so I hate</p> <p>2 to say it's other people's problem, but I had my hands</p> <p>3 full with plenty of other things. It wasn't something</p> <p>4 I was thinking about.</p> <p>5 Q. Do you remember here today that prior to</p> <p>6 December 31, 2020, you believed that NexPoint would not</p> <p>7 make the scheduled payment?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: I had no idea whether NexPoint</p> <p>11 was going to make the payment.</p> <p>12 Q. (BY MR. RUKAVINA) Were you asked prior to</p> <p>13 December 31, 2020 by Mr. Seery or anyone else as to</p> <p>14 whether NexPoint was going to make that payment?</p> <p>15 A. Was I asked by Mr. Seery? Not that I can</p> <p>16 remember.</p> <p>17 Q. Prior to December 31, 2020, do you recall any</p> <p>18 discussion with Mr. Seery about the NexPoint note?</p> <p>19 MR. MORRIS: I'm sorry, can I have the</p> <p>20 question again.</p> <p>21 Q. (BY MR. RUKAVINA) Prior to December 31,</p> <p>22 2020, do you recall any discussion that you had with</p> <p>23 Mr. Seery about this NexPoint note?</p> <p>24 A. Not that I can remember. If there was, it</p> <p>25 would have been in a cash meeting, but I don't remember</p>	59
58	<p>1 at all.</p> <p>2 Q. So it might have been some detail as part of</p> <p>3 a larger discussion, but you don't remember any</p> <p>4 specific discussion just around this note?</p> <p>5 A. No.</p> <p>6 Q. When did you learn or how did you learn that</p> <p>7 the December 31 payment had not been made?</p> <p>8 A. I'm not sure, but certainly after</p> <p>9 December 31.</p> <p>10 Q. Do you recall if it was before or after</p> <p>11 January 7?</p> <p>12 A. I think it was after.</p> <p>13 Q. The default letter from Highland is in here,</p> <p>14 if you need to see it. I'm just telling you it's the</p> <p>15 January 7.</p> <p>16 Do you recall having any role with respect to</p> <p>17 drafting the default letter that went out to NexPoint</p> <p>18 after the failed payment?</p> <p>19 A. No, none that I can remember.</p> <p>20 Q. How do you recall learning that the note had</p> <p>21 been called by Highland?</p> <p>22 A. I honestly don't remember. I think after the</p> <p>23 fact. I couldn't tell you how far after the fact.</p> <p>24 Q. Are you aware that on or about July -- I'm</p> <p>25 sorry, January 14, 2021 NexPoint made a \$1.4 million</p>	60
57	<p>1 and change payment?</p> <p>2 A. Yeah, I'm aware that that payment happened.</p> <p>3 Q. When did you become aware of that payment?</p> <p>4 A. I think after it happened.</p> <p>5 Q. Can you tell us, was it days, weeks, months</p> <p>6 later?</p> <p>7 A. It was that day. And if I can expand, I</p> <p>8 recall getting an email, seeing a large inflow to</p> <p>9 Highland, to MLP because I was on an email distribution</p> <p>10 list that had those payments.</p> <p>11 And I think I emailed or called Kristin and</p> <p>12 asked her, is this the NexPoint note, because it was a</p> <p>13 large amount of money. And she said yes.</p> <p>14 Q. Did she tell you anything more about that</p> <p>15 payment, when it had been made, why, who authorized it?</p> <p>16 A. I had that information of when it had been</p> <p>17 sent. I had a wire confirm.</p> <p>18 Q. Only important thing to you is where did that</p> <p>19 money come from?</p> <p>20 A. It wasn't important to me. It was more</p> <p>21 curiosity.</p> <p>22 Q. Did you have any discussions with anyone on</p> <p>23 or about that time, January 14, 2021, as to why</p> <p>24 NexPoint made that payment?</p> <p>25 A. Not that I can remember.</p>	60

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61	<p>1 MR. MORRIS: Objection to the form of the</p> <p>2 question.</p> <p>3 THE WITNESS: Yeah, it's a very broad</p> <p>4 question. In general terms, yes.</p> <p>5 Q. (BY MR. RUKAVINA) Well, I'm not asking what</p> <p>6 you learned since then.</p> <p>7 I'm asking that as of, let's say, January 15,</p> <p>8 2021 that would have been the extent of what you would</p> <p>9 have known?</p> <p>10 A. Correct. And if I can just restate and make</p> <p>11 sure I understand what I'm saying.</p> <p>12 It would have been my understanding that we</p> <p>13 had had an instruction -- when I say "we," Kristin and</p> <p>14 Frank and by default the whole corporate team -- not to</p> <p>15 make payments from these affiliated entities.</p> <p>16 To my knowledge, none of those payments had</p> <p>17 occurred since that point. And then on or about</p> <p>18 January 14, such a payment was made and I found out</p> <p>19 about that by seeing a wire confirm.</p> <p>20 Q. Well, you mentioned a couple times that you,</p> <p>21 in December 2020, you weren't part of that group</p> <p>22 anymore. So do you have any understanding as to why</p> <p>23 Mr. Waterhouse would have told you in particular, you</p> <p>24 being Mr. Klos, about that instruction from Dondero?</p> <p>25 A. Sure. I still was participating in cash</p>	63
62	<p>1 meetings, even if it was almost in a nominal role,</p> <p>2 because of some of my history that I had. So I was</p> <p>3 still participating in those meetings.</p> <p>4 I've worked closely with Kristin for a long</p> <p>5 time, so I may have caught up with her informally. But</p> <p>6 as far as day-to-day duties, I wasn't part of that team</p> <p>7 anymore.</p> <p>8 Q. And is it your, did I understand you</p> <p>9 correctly, is it your testimony that Mr. Waterhouse</p> <p>10 informed the whole accounting group there, the</p> <p>11 corporate accounting group, of Mr. Dondero's</p> <p>12 instruction?</p> <p>13 A. I don't know specifically who he told, if he</p> <p>14 told every single member of the team, but he certainly</p> <p>15 told Kristin and Kristin was the head of the team.</p> <p>16 Q. And you don't recall anyone, after you heard</p> <p>17 about that instruction, raising any concern to the</p> <p>18 effect that NexPoint is going to default and be in</p> <p>19 trouble if that payment isn't made?</p> <p>20 A. I don't remember any discussion to that</p> <p>21 effect.</p> <p>22 Q. Do you remember anyone suggesting that they</p> <p>23 ought to try to dissuade Mr. Dondero from that</p> <p>24 direction?</p> <p>25 A. Not that I can remember.</p>	64
61	<p>1 Q. Do you remember any discussion at that</p> <p>2 approximate point in time for your cash meetings or</p> <p>3 anything else as to whether NexPoint had made any</p> <p>4 prepayments on the promissory note?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Yeah, it's very hard to -- by</p> <p>8 the way, I've said yeah a few times. I want to make</p> <p>9 clear that that's just --</p> <p>10 Q. (BY MR. RUKAVINA) That's not a yes?</p> <p>11 A. I apologize for that.</p> <p>12 Q. Understood. Yeah means, it's not a yes.</p> <p>13 MR. MORRIS: It's a pause; it's an um.</p> <p>14 Q. (BY MR. RUKAVINA) Germans call it flavoring</p> <p>15 particle.</p> <p>16 A. Sorry, I got lost there. If you can ask</p> <p>17 again.</p> <p>18 Q. Yeah. Do you recall in November or</p> <p>19 December 2020 in your weekly meetings or anything else,</p> <p>20 any discussion whatsoever concerning whether NexPoint</p> <p>21 had made any prepayments on its note?</p> <p>22 A. No discussions of whether or not there had</p> <p>23 been a prepayment that I can remember, no.</p> <p>24 Q. To the best of your knowledge sitting here</p> <p>25 today -- strike that.</p>	64

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65	<p>1 authoritative direction on how they should be applied.</p> <p>2 Q. And that authoritative direction would have</p> <p>3 come from Mr. Waterhouse or Mr. Dondero?</p> <p>4 A. That's what I would expect.</p> <p>5 Q. Could it have come from anyone else that you</p> <p>6 can think of here today?</p> <p>7 A. Not that I can think of.</p> <p>8 Q. Now we're going to switch gears and I think</p> <p>9 we're going to stop discussing the NexPoint note, and</p> <p>10 we're going to focus on the HCMFA two promissory notes.</p> <p>11 A. Sure.</p> <p>12 Q. So we're going to go back in time to</p> <p>13 May 2019; okay?</p> <p>14 A. Sure.</p> <p>15 Q. And is it fair to say by -- that by May 2019</p> <p>16 there were at least dozens if not hundreds of instances</p> <p>17 of intercompany loans in the years leading up there</p> <p>18 from Highland to one of the other entities?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: From Highland to one of the</p> <p>22 other entities. Can you help with other entities.</p> <p>23 Q. (BY MR. RUKAVINA) Advisors, the trusts, any</p> <p>24 of the Dondero entities?</p> <p>25 MR. MORRIS: Objection to the form of the</p>	67
66	<p>1 question.</p> <p>2 THE WITNESS: Yes, there would have been many</p> <p>3 loans over the years.</p> <p>4 Q. (BY MR. RUKAVINA) And do I understand that</p> <p>5 most, if not all, of those loans should have been</p> <p>6 papered up with a written promissory note?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: Should have been. To the</p> <p>10 extent that they were for a promissory note, then yes.</p> <p>11 Q. (BY MR. RUKAVINA) So in the May 2019 time</p> <p>12 frame, was there a regular pattern or course or</p> <p>13 procedure in place as to how a promissory note would be</p> <p>14 physically prepared and presented for approval?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Yeah, when you say a process,</p> <p>18 can you please clarify that for me.</p> <p>19 Q. (BY MR. RUKAVINA) Sure. Let's look at these</p> <p>20 two promissory notes and maybe that will help frame the</p> <p>21 question. And I apologize for not having them right</p> <p>22 here.</p> <p>23 A. It might be --</p> <p>24 MR. MORRIS: 1 and 2.</p> <p>25 MR. RUKAVINA: Yes.</p>	68
65	<p>1 Q. (BY MR. RUKAVINA) Are you familiar with</p> <p>2 Exhibits 1 and 2, sir?</p> <p>3 A. Yes, I am.</p> <p>4 Q. Do you remember them from back -- strike</p> <p>5 that.</p> <p>6 Did you have any role, to your knowledge,</p> <p>7 with the preparation of Exhibits 1 and/or 2?</p> <p>8 A. With the preparation of the documents?</p> <p>9 Q. Yeah.</p> <p>10 A. No.</p> <p>11 Q. But you did have some role with these</p> <p>12 promissory notes?</p> <p>13 A. Yes.</p> <p>14 Q. And I'm trying to find that email as well.</p> <p>15 There's an email here from you. I'll have it in a</p> <p>16 moment. That will help frame the question.</p> <p>17 MR. MORRIS: Exhibit 3.</p> <p>18 Q. (BY MR. RUKAVINA) Do you recall that email,</p> <p>19 sir?</p> <p>20 A. Not specifically, but it's right in front of</p> <p>21 me. I'm certain that I wrote this email.</p> <p>22 Q. You have no reason to deny or reject its</p> <p>23 authenticity?</p> <p>24 A. I have no reason to reject it or question it.</p> <p>25 Q. Just give me a second. I don't understand</p>	68



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69	<p>1 So certainly either Jim or Frank directed you</p> <p>2 to transfer the \$2.4 million; correct?</p> <p>3 A. Either Jim or Frank would have directed, yes.</p> <p>4 There's 0 percent chance I would have sent this email</p> <p>5 if I didn't feel a hundred percent confident that this</p> <p>6 was authorized in the way that I described in the</p> <p>7 email.</p> <p>8 Q. But can you also say with certainty that</p> <p>9 either Dondero or Waterhouse also told you that this</p> <p>10 transfer is an intercompany loan?</p> <p>11 A. With a hundred percent certainty, yes. I</p> <p>12 can't say that necessarily with respect to Dondero,</p> <p>13 because I don't remember if I would have talked to him</p> <p>14 specifically about it. But, yes, this would have been</p> <p>15 clear that it's a loan.</p> <p>16 Q. You say clear. Did someone tell you that</p> <p>17 it's a loan, or are you just, because of the prior</p> <p>18 10 years of course and conduct, logically deciding that</p> <p>19 it has to be a loan?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: So this is -- this is not just</p> <p>23 a situation of past practice. I would have known with</p> <p>24 certainty that this was a loan and that's what was</p> <p>25 authorized.</p>	71
70	<p>1 Q. (BY MR. RUKAVINA) How would you have known</p> <p>2 with certainty that it was a loan?</p> <p>3 A. I'll say in part because of past practice,</p> <p>4 but also because of the nature of what the money was</p> <p>5 going to be used for, and the background behind it.</p> <p>6 Q. So you knew that nature and that background?</p> <p>7 A. The nature and background of the 2.4 million,</p> <p>8 yes.</p> <p>9 Q. So you've told me that in part -- I asked you</p> <p>10 how did you know it was a loan. You said in part past</p> <p>11 practices, in part you knew the nature. Anything else?</p> <p>12 A. I'm certain that given that I wrote this</p> <p>13 email, which Frank is on, that I would have had a</p> <p>14 conversation with Frank about what this was.</p> <p>15 Q. Was Jim Dondero in the corporate accounting</p> <p>16 email?</p> <p>17 A. No, he wasn't.</p> <p>18 Q. So what is your understanding as to what this</p> <p>19 \$2.4 million was for?</p> <p>20 A. This related to -- well, to separate the</p> <p>21 transaction, the 2.4- itself relates to a promissory</p> <p>22 note. That's what was executed.</p> <p>23 HCMFA's use of the 2.4 million was to</p> <p>24 reimburse a fund that it managed called Highland Global</p> <p>25 Allocation Fund for a NAV error that had occurred</p>	72
69	<p>1 within that fund.</p> <p>2 Q. Who made that NAV error?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Yeah, it's hard to answer that.</p> <p>6 So the Highland Capital Management Fund Advisors is the</p> <p>7 advisor to the fund, so they're the responsible party</p> <p>8 for making the fund whole in the instances of NAV</p> <p>9 errors.</p> <p>10 Q. (BY MR. RUKAVINA) And did HCMFA contract out</p> <p>11 with Highland for valuation services?</p> <p>12 MR. MORRIS: Objection to the form of the</p> <p>13 question.</p> <p>14 THE WITNESS: I don't specifically remember</p> <p>15 if they contracted for valuation services, but if you</p> <p>16 tell me that they did, I'll take that at face value.</p> <p>17 So yes, HCMFA utilized HCMLP for valuation services.</p> <p>18 Q. (BY MR. RUKAVINA) Do you have any memory of</p> <p>19 what human being or beings made that NAV error?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: It's -- in respect to people,</p> <p>23 not particularly. In respect to parties, Houlihan</p> <p>24 Lokey was the service provider that performed the</p> <p>25 valuation that resulted in the NAV error.</p>	72

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73	<p>1 to my knowledge.</p> <p>2 Second, the amount was to meet the liquidity</p> <p>3 need of HCMFA. It wasn't to -- it wasn't to</p> <p>4 dollar-for-dollar make up for the NAV error. It was</p> <p>5 that's how much money HCMFA needed.</p> <p>6 Third, it was definitely Dondero's practice</p> <p>7 and preference to have expenses at HCMFA for tax</p> <p>8 purposes. So if this was compensation, he would</p> <p>9 ultimately not really be benefiting from the deduction</p> <p>10 so.</p> <p>11 That would have been a strong preference of</p> <p>12 his against having it be compensation.</p> <p>13 So it would have been excruciatingly clear</p> <p>14 that this was a loan for liquidity for HCMFA to make</p> <p>15 the fund whole, just like it had in the past NAV</p> <p>16 errors.</p> <p>17 Q. How did you know that HCMFA needed</p> <p>18 \$2.4 million for liquidity?</p> <p>19 A. At that point I was still part of the</p> <p>20 corporate team, so I had a good sense of how much cash</p> <p>21 HCMFA would have had at any given moment. And at that</p> <p>22 given moment it would not have had -- I'd be shocked if</p> <p>23 it had even 2.4-.</p> <p>24 Probably would have had probably between</p> <p>25 a million and 2 million if I had to speculate.</p>	75	<p>1 HCMFA for the liquidity. HCMFA made the payment to the</p> <p>2 fund. It wasn't dollar for dollar. I think it was</p> <p>3 like 5,019,000, or some such number.</p> <p>4 But 5 million was the number that would allow</p> <p>5 it to make that payment effectively to the investors of</p> <p>6 Global Allocation Fund.</p> <p>7 Q. Do you have any understanding as to why</p> <p>8 Highland, as opposed to some other entity, was</p> <p>9 transferring \$7.4 million?</p> <p>10 A. Highland as opposed to some other entity?</p> <p>11 Q. Uh-huh.</p> <p>12 A. Because Highland had the money.</p> <p>13 Q. But I think we've established earlier that in</p> <p>14 the first seven months of 2019, Highland was having</p> <p>15 constant liquidity issues?</p> <p>16 A. It was.</p> <p>17 Q. And that's part of the reason that NexPoint</p> <p>18 was making unscheduled payments on its note; right?</p> <p>19 A. That's part of the reason NexPoint was making</p> <p>20 unscheduled payments on its note, yes.</p> <p>21 Q. So your recollection is that HCMFA needed</p> <p>22 \$2.4 million for liquidity purposes and about</p> <p>23 \$5 million for the consent fee. And Highland</p> <p>24 transferred those funds because Highland had the funds?</p> <p>25 A. Yes. And I should clarify that Highland only</p>
74	<p>1 Q. Okay. So you've given the reasons why this</p> <p>2 was clearly a loan.</p> <p>3 But you never heard Mr. Dondero say that this</p> <p>4 was a loan, did you?</p> <p>5 A. I don't remember. It's possible I did, but I</p> <p>6 don't specifically remember.</p> <p>7 Q. Okay. What about the \$5 million loan on the</p> <p>8 day after? What was that \$5 million for?</p> <p>9 A. That was similar but different. So again,</p> <p>10 HCMFA needed liquidity. This time this was for --</p> <p>11 related to that same fund.</p> <p>12 So Highland Global Allocation Fund had</p> <p>13 converted from an open-end fund, mutual fund, to a</p> <p>14 closed-end mutual fund.</p> <p>15 And pursuant to that conversion there was a,</p> <p>16 I believe it was called a consent fee, for any</p> <p>17 investors of that fund who consented to the conversion,</p> <p>18 that they would receive a 3 percent fee payable by the</p> <p>19 investment advisor.</p> <p>20 And so at this time the bill came due on that</p> <p>21 because the conversion had been completed, and the</p> <p>22 accounting for how much that 3 percent was going to be</p> <p>23 was complete.</p> <p>24 HCMFA sure as hell didn't have 5 million</p> <p>25 bucks. Excuse my language. Highland needed to pay</p>	76	<p>1 had the funds because Mr. Dondero repaid personal notes</p> <p>2 to HCMLP on the same days.</p> <p>3 So he paid 2.4 million on May 2, which</p> <p>4 Highland turned around and reloaned. And he paid 4.4-</p> <p>5 on May 3, and Highland sent out 5-, so there's a</p> <p>6 \$600,000 difference. And my recollection, he paid the</p> <p>7 other 600,000 via note repayment within a few days.</p> <p>8 Q. So this would have been part of some broader</p> <p>9 transaction in Mr. Dondero's mind?</p> <p>10 A. I would not characterize it that way.</p> <p>11 Q. You established that HCMFA needed money. You</p> <p>12 established that Highland temporarily had money because</p> <p>13 Dondero provided it with money.</p> <p>14 But you still don't know, sir, as a fact as</p> <p>15 to whether that transfer was a loan or some other</p> <p>16 payment from HCMFA -- I'm sorry from HCM, from debtor</p> <p>17 to HCMFA?</p> <p>18 MR. MORRIS: Objection to the form of the</p> <p>19 question. Asked and answered a million times. It's in</p> <p>20 the documents you're showing him.</p> <p>21 THE WITNESS: It was a loan.</p> <p>22 MR. MORRIS: Come on, Davor. With all due</p> <p>23 respect, it's in the document. It's on the document.</p> <p>24 Q. (BY MR. RUKAVINA) I'm being courteous and</p> <p>25 respectful to you and I'd ask the same in return; okay?</p>

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77	<p>1 A. Absolutely. I apologize if I haven't been.</p> <p>2 Q. Mr. Dondero, would you agree, was the only</p> <p>3 person that had the authority at the debtor to</p> <p>4 authorize a transfer of 2.4- and then \$5 million?</p> <p>5 A. At the debtor?</p> <p>6 MR. MORRIS: Objection to the form of the</p> <p>7 question.</p> <p>8 Q. (BY MR. RUKAVINA) Yes, at the debtor.</p> <p>9 A. No.</p> <p>10 Q. Who else could have transferred 2.4 million</p> <p>11 or \$5 million?</p> <p>12 A. Those are two different questions. But if</p> <p>13 you're asking who had the authority, certainly Frank</p> <p>14 did as well.</p> <p>15 Q. So Frank had the authority. Perhaps my</p> <p>16 question was inartful.</p> <p>17 Do you believe that Mr. Waterhouse would have</p> <p>18 decided to transfer \$2.4 million or \$5 million without</p> <p>19 Mr. Dondero's approval?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: Generally speaking, no, but I</p> <p>23 don't know exactly what the form of the approval. But</p> <p>24 he certainly wouldn't have done that on his own without</p> <p>25 discussing with Dondero.</p>	79	<p>1 into the note on behalf of HCMFA, yes.</p> <p>2 Q. (BY MR. RUKAVINA) Was that something that he</p> <p>3 would have done without Mr. Dondero's approval to your</p> <p>4 understanding and practice at that time?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Same answer that I gave before</p> <p>8 with respect to Highland.</p> <p>9 Q. (BY MR. RUKAVINA) So here's where I'm going</p> <p>10 with all this.</p> <p>11 Mr. Dondero's position, and tomorrow his</p> <p>12 testimony will be, that he caused the \$7.4 million to</p> <p>13 be transferred not as a loan to HCMFA, but to</p> <p>14 compensate HCMFA for various things including that NAV</p> <p>15 error.</p> <p>16 Other than perhaps you think he's lying,</p> <p>17 would you have any knowledge, hearsay, document,</p> <p>18 anything, to contradict Mr. Dondero's position?</p> <p>19 MR. MORRIS: Objection to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: Yes. I would point to the fact</p> <p>22 that as it pertains to the \$5 million note, if we're</p> <p>23 separating issues, there's no other possibility of what</p> <p>24 that money could be other than either a loan or equity.</p> <p>25 It's not compensation. Highland is under --</p>
78	<p>1 Q. (BY MR. RUKAVINA) Do you believe that</p> <p>2 Mr. Waterhouse had the ability on behalf of the debtor</p> <p>3 to loan \$5 million without Mr. Dondero's approval?</p> <p>4 MR. MORRIS: Objection to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: I think he had the technical</p> <p>7 authority to. However, I don't believe in practice</p> <p>8 that he ever would.</p> <p>9 Q. (BY MR. RUKAVINA) Same question, \$2.4</p> <p>10 million?</p> <p>11 A. Same answer.</p> <p>12 Q. We've established that you never really had a</p> <p>13 direct employment or types of a role for NexPoint --</p> <p>14 I'm sorry, for HCMFA; right?</p> <p>15 A. Again --</p> <p>16 Q. To the best of your recollection?</p> <p>17 A. Best of my recollection I can't remember how</p> <p>18 the titles transferred over or whatever, but I don't</p> <p>19 believe I did.</p> <p>20 Q. Do you know whether Mr. Waterhouse in 2019</p> <p>21 had the authority, without Mr. Dondero's approval, to</p> <p>22 borrow \$7.4 million on behalf of HCMFA?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: He had the authority to enter</p>	80	<p>1 HCMLP has absolutely zero obligation in respect to that</p> <p>2 consent fee. So when Highland sends \$5 million to HCMFA</p> <p>3 there's nothing else that it can be. That's Point 1.</p> <p>4 Point 2, we're right in the middle of an audit</p> <p>5 at this point. Jim signs rep letters at this point.</p> <p>6 He's being provided balance sheets throughout 2019 that</p> <p>7 indicate the loans that Highland has on its books.</p> <p>8 Balance sheets are being prepared in respect</p> <p>9 of annual approvals for 15(c) for retail funds in the</p> <p>10 fall. Schedules are being created for bankruptcy after</p> <p>11 we file in October.</p> <p>12 Nobody says this is a mistake. Frank is on</p> <p>13 all of these emails. Frank never questions it.</p> <p>14 There's absolutely no evidence from that point</p> <p>15 in time to whenever this defense got raised that would</p> <p>16 indicate that anybody said that these weren't exactly</p> <p>17 what they say they are.</p> <p>18 Q. (BY MR. RUKAVINA) Are you aware that in</p> <p>19 February or March 2019 some \$5.2 million was paid from</p> <p>20 insurance that HCMFA had to the fund for the NAV error?</p> <p>21 A. The amount sounds unfamiliar, but I'm aware</p> <p>22 that insurance proceeds were paid from HCMFA to the</p> <p>23 fund.</p> <p>24 Q. And do you think that it's impossible for a</p> <p>25 sane, rational person to conclude that HCMFA had a</p>

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81	<p>1 claim against the debtor related to that NAV error?</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: If it did, I don't know how</p> <p>5 that's not insurance fraud for basically double</p> <p>6 collecting insurance proceeds and then collecting it</p> <p>7 again.</p> <p>8 Q. (BY MR. RUKAVINA) So you believe, sir, that</p> <p>9 if insurance pays a claim you have no more right to go</p> <p>10 against a person who caused the fault?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: We can speak specifically here.</p> <p>14 This is about a NAV error that an insurance company</p> <p>15 reimbursed HCMFA for, which it then turned around and</p> <p>16 paid for the fund.</p> <p>17 So if it went to collect that same, let's use</p> <p>18 round numbers, \$5 million from Highland that it's</p> <p>19 already collected from insurance, that sounds</p> <p>20 inappropriate to me.</p> <p>21 Q. (BY MR. RUKAVINA) Okay. But you don't know</p> <p>22 whether that's allowed in Texas law or not, do you?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: No, I don't know whether it's</p>	83
82	<p>1 allowed under Texas law.</p> <p>2 Q. (BY MR. RUKAVINA) So you don't know that if</p> <p>3 you're hit by someone on the street and your medical</p> <p>4 insurance pays your bills, you don't know that he still</p> <p>5 has to pay you for the same bills?</p> <p>6 MR. MORRIS: Objection to the form of the</p> <p>7 question. I hope I don't miss my plane.</p> <p>8 Q. (BY MR. RUKAVINA) You don't know that under</p> <p>9 Texas law if someone hits you with their car and causes</p> <p>10 you medical bills and your medical insurance pays those</p> <p>11 bills, that you can still sue them for the same</p> <p>12 damages?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: I'm not familiar at any level</p> <p>16 of specificity with Texas law.</p> <p>17 Q. (BY MR. RUKAVINA) Again, it just sounds</p> <p>18 wrong to you that you could go after someone after</p> <p>19 insurance pays, but you don't know legally one way or</p> <p>20 the other?</p> <p>21 A. Correct. I'm not a lawyer or expert in Texas</p> <p>22 law. It feels wrong, yes.</p> <p>23 Q. Okay. Going back to this email of yours,</p> <p>24 Exhibit 3, do you recall whether there was a similar</p> <p>25 email with respect to the \$5 million note?</p>	84
81	<p>1 A. Yes, I am. I believe Kristin sent that one.</p> <p>2 Q. Kristin sent that one?</p> <p>3 A. I believe so.</p> <p>4 Q. To whom?</p> <p>5 A. Likely the same distribution group, but</p> <p>6 that's speculation.</p> <p>7 Q. Did you see such an email in the last week or</p> <p>8 two?</p> <p>9 A. I'm not certain, but probably. I have seen</p> <p>10 email communication on or around May 3, but I don't</p> <p>11 know specifically who all was on the email. I'm going</p> <p>12 off what I would expect to see.</p> <p>13 MR. MORRIS: If you're really interested,</p> <p>14 it's right here. It was produced to you with</p> <p>15 Bates 3763. And if you'd like to question the witness.</p> <p>16 MR. RUKAVINA: When was it produced?</p> <p>17 MR. MORRIS: I can't tell you. It's part of</p> <p>18 the same package.</p> <p>19 Q. (BY MR. RUKAVINA) So going back to this</p> <p>20 Exhibit 3, sir, why did you ask Kristin, can you or</p> <p>21 Hayley please prep a note for execution? Why them?</p> <p>22 Remember, I was asking about what the course</p> <p>23 or procedure was at that point in time.</p> <p>24 A. Yeah, so nomenclature, procedure, process.</p> <p>25 I would say the informal process for these</p>	84

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85	<p>1 Mr. Waterhouse as opposed to Mr. Dondero sign these two</p> <p>2 promissory notes?</p> <p>3 A. I don't.</p> <p>4 Q. On the \$5 million note, do you remember if</p> <p>5 you had any role with respect to its physical papering</p> <p>6 or execution?</p> <p>7 A. Not that I recall.</p> <p>8 Q. To the best of your memory, your role would</p> <p>9 have been done by instructing your team, hey, here is</p> <p>10 these new loans, go paper it up; is that accurate?</p> <p>11 A. On the upfront side. I suppose my role would</p> <p>12 have also included on the back end making sure that the</p> <p>13 actual payment had occurred. But that would have been</p> <p>14 doing that realtime, seeing the funds went out, and</p> <p>15 that, most importantly, that the consent fee had been</p> <p>16 paid from HCMFA to the transfer agent.</p> <p>17 Q. How did you or anyone on your team know -- so</p> <p>18 obviously, you know it's a \$2.4 million loan because</p> <p>19 that's what Waterhouse or Dondero told you; right?</p> <p>20 How did you know it was a \$2.4 million loan?</p> <p>21 MR. MORRIS: Objection. Asked and answered.</p> <p>22 THE WITNESS: I knew that the NAV error was</p> <p>23 2 million, I think it was 398,000, somewhere in that</p> <p>24 ballpark. And that 2.4- had been authorized for that</p> <p>25 purpose.</p>	87
86	<p>1 Q. (BY MR. RUKAVINA) Do you know who decided</p> <p>2 what the interest rate in this note would be, or that</p> <p>3 it would be a demand note as opposed to a term note?</p> <p>4 A. I don't specifically know who made that</p> <p>5 decision. However, the common practice for fund</p> <p>6 advisors was to put -- was for the rate to equal the, I</p> <p>7 forget if it was the short-term or long-term AFR.</p> <p>8 And for the note to be demand, that was just</p> <p>9 the standard -- that was the standard.</p> <p>10 Q. And I think I asked this, but just if I</p> <p>11 didn't.</p> <p>12 For either or both of these two notes, the</p> <p>13 2.4- and \$5 million note, did you have any role with</p> <p>14 respect to Mr. Waterhouse signing them?</p> <p>15 A. No, not that I can remember. I don't think I</p> <p>16 did.</p> <p>17 Q. And you don't remember doing anything to get</p> <p>18 his signatures?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Nor would that have been something that you</p> <p>21 would expect that you would have a role with?</p> <p>22 A. Certainly not in this instance. Maybe to the</p> <p>23 extent that nobody else was around and it was time</p> <p>24 sensitive, but that wouldn't have been the case with</p> <p>25 these, I don't believe.</p>	88
85	<p>1 Q. Did you have any understanding in early May</p> <p>2 of 2019 as to whether HCMFA was solvent or insolvent?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Whether HCMFA was solvent or</p> <p>6 insolvent? I'm not a solvency expert, so I don't know</p> <p>7 that I could even attempt to answer that.</p> <p>8 Q. (BY MR. RUKAVINA) Did you have an</p> <p>9 understanding as far as HCMFA goes on May 2, 2019, that</p> <p>10 its liabilities exceeded its assets?</p> <p>11 A. I don't remember specifically where it stood</p> <p>12 on assets versus liabilities.</p> <p>13 Q. Do you have any memory that by May 2, 2019,</p> <p>14 the debtor had taken a couple prior demand notes from</p> <p>15 HCMFA and made them not collectible prior to May 31,</p> <p>16 2021?</p> <p>17 A. I know what you're referring to. I wouldn't</p> <p>18 characterize it that way.</p> <p>19 Q. How would you characterize it?</p> <p>20 A. I recall that there was a financial support</p> <p>21 acknowledgment, I think it was the name of the</p> <p>22 acknowledgment.</p> <p>23 That described -- I can't remember if it</p> <p>24 described those two notes specifically or just referred</p> <p>25 to them, that there would not be collection sought on</p>	88

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89	<p>1 So why would Highland be loaning an</p> <p>2 additional \$7.4 million in early May of 2019 to HCMFA</p> <p>3 when HCMFA already was then unable to repay its debts</p> <p>4 to Highland?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Yeah, I kind of reject the</p> <p>8 premise of the question, and these are all controlled</p> <p>9 by Jim. And it's completely within his power at any</p> <p>10 point in time to make any payment on any of the loans,</p> <p>11 depending on where priorities sit.</p> <p>12 So the idea that HCMFA -- that Highland would</p> <p>13 be doing a credit analysis on HCMFA, determining that it</p> <p>14 was unable to make that payment and, therefore, this is</p> <p>15 a bad note, is a completely foreign, preposterous</p> <p>16 concept at that time.</p> <p>17 Q. (BY MR. RUKAVINA) And in May of 2019 isn't</p> <p>18 it also, sir, the case that Mr. Dondero could have,</p> <p>19 right or wrong, agree or disagree, said, that 7.4- is</p> <p>20 going to compensate HCMFA for the NAV error as opposed</p> <p>21 to being a loan?</p> <p>22 A. No.</p> <p>23 Q. That's not possible?</p> <p>24 A. No.</p> <p>25 Q. And why is that not possible?</p>	91
90	<p>1 A. As we discussed, the 5-, there's absolutely</p> <p>2 no construct where that can be compensation for an NAV</p> <p>3 error. It's not a NAV error. It's a consent fee.</p> <p>4 Highland has absolutely no responsibility for that.</p> <p>5 Highland also has no responsibility for the</p> <p>6 2.4-, but if you want to assume that it did, that's</p> <p>7 completely not the practice. It was Jim's preference</p> <p>8 to do these via loans, and that's how it was booked.</p> <p>9 Q. You're saying on the one hand Mr. Dondero can</p> <p>10 absolutely control that one entity make a loan to</p> <p>11 another, irrespective of credit worthiness, but he</p> <p>12 can't decide that a transfer is compensation as opposed</p> <p>13 to a loan?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question. Argumentative.</p> <p>16 THE WITNESS: If he wants to call</p> <p>17 \$7.4 million compensation to himself or to HCMFA, I</p> <p>18 just don't know how he does that. This is me being an</p> <p>19 accountant. I don't know how that's possible.</p> <p>20 If he wants to pay himself a \$7.4 million</p> <p>21 bonus from HCMFA, fine, he has the power to do that. If</p> <p>22 he wants Highland to inject 7.4 million of equity into</p> <p>23 HCMFA, he has the power to do that.</p> <p>24 But sending the 7.4 million and calling it</p> <p>25 something else, I don't know how he could do that.</p>	92

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93	<p>1 situation was.</p> <p>2 Q. Do you remember on or before May 3, 2019</p> <p>3 discussing the \$5 million transfer with Mr. Dondero?</p> <p>4 A. Again, in general terms. I couldn't tell you</p> <p>5 a time period, but this was something that, between</p> <p>6 Frank and I, we had put on Jim's radar that this would</p> <p>7 be a cash need in the future. I couldn't specify</p> <p>8 specifically when that happened.</p> <p>9 Q. Okay. You have no present memory of</p> <p>10 discussing that issue with Mr. Dondero on or before</p> <p>11 May 3, 2019? It must have happened but you have no</p> <p>12 memory?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: We discussed that there would</p> <p>16 be a consent fee payable from HCMFA. We would have</p> <p>17 discussed -- and again, I don't remember where I was,</p> <p>18 what day it was, the specifics around the conversation.</p> <p>19 But I know that we had conversations</p> <p>20 pertaining to cash, because this was a large need for --</p> <p>21 cash need for HCMFA to satisfy this, and this was an</p> <p>22 important payment.</p> <p>23 And neither HCMFA nor Highland had the</p> <p>24 wherewithal to make that payment. The only way that</p> <p>25 those could make the payment was by Jim Dondero repaying</p>	95	<p>1 Q. So it's possible that Mr. Dondero told no one</p> <p>2 that these were loans but because y'all have been doing</p> <p>3 it this way for 10 years, that everyone, all of you</p> <p>4 CPAs, understood that it had to be a loan?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 Q. (BY MR. RUKAVINA) My question is, is that</p> <p>8 possible?</p> <p>9 A. I really don't think it's possible. I</p> <p>10 suppose people say anything is possible. Again, two</p> <p>11 and a half years ago, I'm certain that that was the</p> <p>12 intent at the time and I'm sure it was communicated as</p> <p>13 such. I just don't have a specific recollection.</p> <p>14 MR. RUKAVINA: Thank you.</p> <p>15 I'll pass the witness.</p> <p>16 MR. MORRIS: Michael, do you have any</p> <p>17 questions?</p> <p>18 MR. AIGEN: I do. I assume you want me to</p> <p>19 start now to do my best to be done at 5:00?</p> <p>20 MR. MORRIS: Yes, please.</p> <p>21 EXAMINATION</p> <p>22 Q. (BY MR. AIGEN) Good afternoon, Mr. Klos. My</p> <p>23 name is Michael Aigen with the Stinson law firm. I</p> <p>24 represent Mr. Dondero, HCMS, and HCRE.</p> <p>25 How are you today?</p>
94	<p>1 loans that he owed to HCMLP. So we absolutely discussed</p> <p>2 that with Jim Dondero.</p> <p>3 Q. (BY MR. RUKAVINA) And with respect to</p> <p>4 everything that we just talked about and your</p> <p>5 recollection, you still don't remember Mr. Dondero</p> <p>6 saying to you or Mr. Waterhouse one way or the other</p> <p>7 that one or both of these transfers were loans?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question. Asked and answered.</p> <p>10 THE WITNESS: Yeah, again --</p> <p>11 Q. (BY MR. RUKAVINA) Just yes or no. This is a</p> <p>12 yes-or-no question.</p> <p>13 MR. MORRIS: Let him answer the question.</p> <p>14 MR. RUKAVINA: If he'll answer the question</p> <p>15 I'll stop asking him --</p> <p>16 MR. MORRIS: He's allowed --</p> <p>17 Q. (BY MR. RUKAVINA) The answer [verbatim] is,</p> <p>18 do you remember --</p> <p>19 A. I don't remember Jim's exact words two and a</p> <p>20 half years ago in respect to authorizing these</p> <p>21 payments. So to answer your question, no, I don't</p> <p>22 specifically remember him saying these are loans.</p> <p>23 But every other fact around this tells me</p> <p>24 that we did have that conversation and that was the</p> <p>25 conclusion and that was the direction.</p>	96	<p>1 A. I'm very good, thank you.</p> <p>2 Q. First topic I wanted to ask you about is the</p> <p>3 defense raised by some of the defendants related to an</p> <p>4 oral agreement and condition subsequent.</p> <p>5 So my question for you generally is, are you</p> <p>6 aware that some of the defendants in these proceedings</p> <p>7 have raised a defense that there was a subsequent oral</p> <p>8 agreement allowing notes to be potentially forgiven if</p> <p>9 certain events occur?</p> <p>10 A. Yeah, I'm generally aware of the defenses</p> <p>11 sitting here today.</p> <p>12 Q. And how are you generally aware of this</p> <p>13 defense?</p> <p>14 A. I don't know with specificity. Potentially</p> <p>15 through just document flow on the bankruptcy side,</p> <p>16 potentially with conversations internally or with</p> <p>17 counsel. But I generally understand them to have been</p> <p>18 raised, the defenses that is.</p> <p>19 Q. And I don't want to get into conversations</p> <p>20 with counsel. I'm not allowed to do that.</p> <p>21 Let me ask you, have you had any</p> <p>22 conversations with anyone other than counsel about this</p> <p>23 subsequent oral agreement defense?</p> <p>24 A. I have had general conversations with</p> <p>25 Mr. Seery about it. And other than that, nothing</p>

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97	<p>1 substantive.</p> <p>2 Q. And what did you discuss about this with</p> <p>3 Mr. Seery?</p> <p>4 A. I've discussed with him, I hate to phrase it</p> <p>5 this way, the ridiculousness of the defense. Under</p> <p>6 oath. I've discussed my general understanding of what</p> <p>7 is being asserted as a defense.</p> <p>8 Which is that there was some sort of an oral</p> <p>9 agreement between Jim and his sister at some point in</p> <p>10 the past pertaining to forgiveness of certain</p> <p>11 promissory notes that was conditional upon Highland</p> <p>12 monetizing any of three PE assets for any amount above</p> <p>13 cost.</p> <p>14 Q. And is it fair to say that prior to these</p> <p>15 lawsuits being brought, you weren't aware of any oral</p> <p>16 agreements related to the promissory notes related to</p> <p>17 potential forgiveness?</p> <p>18 A. That's correct. Not that I can remember, and</p> <p>19 I think I would remember.</p> <p>20 Q. And other than your conversations with</p> <p>21 Mr. Seery and counsel, you haven't had any</p> <p>22 conversations with anyone else about these alleged oral</p> <p>23 agreements; is that fair to say?</p> <p>24 A. I'm not sure I understand the question.</p> <p>25 Q. You told me you may have had questions with</p>	99
98	<p>1 counsel about these oral agreements defense, and you</p> <p>2 told me about conversations with Mr. Seery, so I'm</p> <p>3 trying to close that topic.</p> <p>4 Was there anyone else you had any</p> <p>5 conversations with about this alleged oral agreement?</p> <p>6 A. Like I said before, nothing of substance.</p> <p>7 I've probably mentioned it in passing to other</p> <p>8 employees, this is what I understand is being asserted</p> <p>9 in this, but nothing of substance.</p> <p>10 Q. Do you have any personal knowledge as to</p> <p>11 whether Mr. Dondero or Ms. Dondero entered into any</p> <p>12 type of oral agreement prior to the bankruptcy?</p> <p>13 A. No, not other than what's been pled, or</p> <p>14 whatever the terminology is.</p> <p>15 Q. I want to talk a little bit about, you</p> <p>16 touched on earlier, you gave some testimony about how</p> <p>17 in -- there were certain term loans that had payments</p> <p>18 due in December or on or about December 31, 2020.</p> <p>19 Do you remember talking about that?</p> <p>20 A. Yeah, generally.</p> <p>21 Q. And I don't know if you're specifically</p> <p>22 referring to these loans, but is it also your</p> <p>23 understanding that HCMS and HCRE also had payments that</p> <p>24 were due on December 31, 2020?</p> <p>25 A. Yes.</p>	100
97	<p>1 Q. Is it fair to say that if those payments were</p> <p>2 to be made, it would have been Ms. Hendrix that would</p> <p>3 have gone and effectuated those payments?</p> <p>4 MR. MORRIS: Objection to the form of the</p> <p>5 question.</p> <p>6 THE WITNESS: Can you remind me the entities</p> <p>7 again.</p> <p>8 Q. (BY MR. AIGEN) Sorry. HCMS and HCRE</p> <p>9 Partners.</p> <p>10 A. HCMS, yes. HCRE, I'm not sure, maybe.</p> <p>11 Q. Why might it have been different?</p> <p>12 A. I just don't recall who had the, you know,</p> <p>13 kind of bank access to effectuate that payment. I</p> <p>14 think Kristin did but I'm not certain.</p> <p>15 Q. It wouldn't have been you; is that fair to</p> <p>16 say?</p> <p>17 A. Correct. It would not have been me.</p> <p>18 Q. And if Ms. Hendrix testified that the</p> <p>19 instruction she received in December 2020 about not</p> <p>20 making payments related only to the Advisors and not to</p> <p>21 HMS or HCRE, would you have any reason to disagree with</p> <p>22 her?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: Yeah, I was struggling with</p>	100



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101	<p>1 make payments from certain entities in December of</p> <p>2 2020?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Yeah, I'm aware, and I think I</p> <p>6 spoke to that earlier of the instruction that had come</p> <p>7 down from Dondero through Frank to Kristin, and I was</p> <p>8 certainly aware of it.</p> <p>9 And I'm -- and I think I spoke to the fact</p> <p>10 that, you know, certainly hearing it from a person who,</p> <p>11 as I said before, wasn't really on the team at that</p> <p>12 point, it was certainly my understanding that that was a</p> <p>13 global instruction at the time.</p> <p>14 Q. (BY MR. AIGEN) And I want to get into what</p> <p>15 was actually said and what you remember, so let me ask</p> <p>16 you this.</p> <p>17 This instruction that came down started from</p> <p>18 Jim and went to Frank. Is that your understanding?</p> <p>19 A. That's my understanding.</p> <p>20 Q. You weren't there during that discussion I</p> <p>21 assume; is that correct?</p> <p>22 A. Correct, I was not.</p> <p>23 Q. And then Frank gave an instruction to</p> <p>24 Kristin; is that your recollection?</p> <p>25 MR. MORRIS: Objection to the form of the</p>	103
102	<p>1 question.</p> <p>2 THE WITNESS: Yeah, it's my understanding</p> <p>3 that Frank informed Kristin of that instruction.</p> <p>4 Q. (BY MR. AIGEN) Were you there when Frank</p> <p>5 provided this instruction to Kristin?</p> <p>6 A. I don't believe I was.</p> <p>7 Q. Then can I ask, how did you become aware that</p> <p>8 Frank had given this instruction to Kristin?</p> <p>9 A. Through subsequent conversations with Frank</p> <p>10 and Kristin. As I said before, I don't recall if it</p> <p>11 was the three of us or me and Frank or me and Kristin.</p> <p>12 But subsequent conversations.</p> <p>13 Q. Are we talking about conversations back in</p> <p>14 2020 or after the bankruptcy?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: During 2020, December of 2020.</p> <p>18 Q. (BY MR. AIGEN) Sitting here today, can you</p> <p>19 say with a hundred percent certainty that the</p> <p>20 instruction related to all of the entities as opposed</p> <p>21 to just Advisors?</p> <p>22 A. So as you pointed out, I was not party to the</p> <p>23 direction, so I have no way of knowing with any sort of</p> <p>24 specificity what the direction actually was. I just</p> <p>25 know how it was conveyed to me and how I understood it.</p>	104
101	<p>1 Q. When you say it was conveyed to you, are you</p> <p>2 talking about subsequent discussions that you had with</p> <p>3 Ms. Hendrix and Mr. Waterhouse after they talked to</p> <p>4 each other?</p> <p>5 A. Yes.</p> <p>6 Q. Sitting here today, can you tell me for sure</p> <p>7 that one of them told you that this instruction related</p> <p>8 to all of the entities, as opposed to just the</p> <p>9 Advisors?</p> <p>10 A. No, I can't say that with certainty, but I</p> <p>11 think that that was the case. But, again, I can't say</p> <p>12 with certainty.</p> <p>13 Q. Would you defer to Mr. Waterhouse and</p> <p>14 Ms. Hendrix over what the specific instructions were?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: Like I said, I wasn't part of</p> <p>18 the conversation, so I would defer to people who</p> <p>19 received the directions more directly.</p> <p>20 Q. (BY MR. AIGEN) And you're not aware of</p> <p>21 anything in writing or anything that reflects these</p> <p>22 instructions on whether to pay or not to pay certain</p> <p>23 payments in December of 2020?</p> <p>24 A. No, I'm not aware of anything in writing.</p> <p>25 Q. And let's change topics for a second here.</p>	103
102	<p>1 I want to throw out a term. Are you familiar</p> <p>2 with the term "NAV ratio trigger period" as it was used</p> <p>3 in --</p> <p>4 A. In a very, very general sense, yes.</p> <p>5 Q. And in a general sense what does that term</p> <p>6 mean to you?</p> <p>7 A. It's a term I recognize from the limited</p> <p>8 partnership agreement of HCMLP. It's a defined term in</p> <p>9 that agreement.</p> <p>10 Q. To your knowledge, was the NAV ratio trigger</p> <p>11 period ever reached or triggered prior to the Highland</p> <p>12 bankruptcy?</p> <p>13 A. I don't know the definition, so I don't know</p> <p>14 based on the definition whether it had or hadn't.</p> <p>15 Q. Sitting here today, though, it's not your</p> <p>16 belief, based on your experience, that it was</p> <p>17 triggered; is that fair to say?</p> <p>18 MR. MORRIS: Objection to the form of the</p> <p>19 question.</p> <p>20 THE WITNESS: I don't know the consequence of</p> <p>21 being in a trigger period, I guess is what -- how I'm</p> <p>22 trying to answer your question.</p> <p>23 Q. (BY MR. AIGEN) Have you ever had any</p> <p>24 conversations with Nancy Dondero?</p> <p>25 A. Yes.</p>	104

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105	<p>1 Q. Generally, how many and what was the 2 reasoning? 3 A. Probably less than five. I think maybe only 4 one or two that I can really remember. 5 Q. At a high level what were those conversations 6 about? 7 A. From my recollection of my conversations with 8 her, they pertained to the DRIP, which is a dividend 9 reinvestment program that I helped. 10 Q. And approximately when were these 11 conversations? 12 A. I don't know. Sometime between 2017 and 13 probably 2019. I couldn't tell you with any 14 specificity. These were very informal. 15 Q. Fair to say that you've never had any 16 conversations with Nancy Dondero about any of the loans 17 at issue in this case? 18 A. No, no, no, I've never had a conversation 19 with her like that. 20 Q. And fair to say that you've never had any 21 conversations with Nancy Dondero about compensation for 22 Jim or any other officers at Highland? 23 A. Correct. 24 MR. AIGEN: Why don't we go off the record 25 for two minutes. I think I'm either done or about</p>	107
106	<p>1 done. 2 (Off the record.) 3 Q. (BY MR. AIGEN) You understand you're still 4 under oath? 5 A. Yes. 6 Q. Are you aware of any loans that Highland has 7 made to any employees or officers that were forgiven in 8 all or in part? 9 A. Yes. 10 Q. Can you tell me who? 11 A. I don't know that this will be a complete 12 list, but there were a few employees in the kind of 13 late aughts, maybe 2010, 2011 frame. 14 Q. Do you know the names? 15 A. One was Jack Yang. Another, I'm not sure if 16 it was forgiven or not, that's why I'm hesitating, but 17 it was Tim Lawler. I think his was forgiven in part or 18 in full, but I'm not a hundred percent certain. 19 Q. And any other individuals that received loans 20 that were forgiven in part that you're aware of? 21 A. Not that I recall, but there could be others. 22 Some of this is very, very old. 23 Q. Changing topics here a little bit, I'm going 24 to combine two entities to try to speed this up. If 25 you need to separate, that's fine.</p>	108
105	<p>1 Can you just generally explain to me what 2 services Highland Capital Management provided for 3 HCMS and HCRE? 4 A. For HCMS -- I do need to separate these a 5 little bit. For HCMS, really full-service accounting, 6 tax, treasury, cash payments. I said tax. Valuation. 7 Nothing personnel-wise because they didn't have any 8 employees. 9 That's all I can think of right off the top 10 of my head, but I could be missing some. 11 Q. And what about HCRE? How is that different? 12 A. Similar, except different types of assets. 13 So more real estate, so less heavy. 14 Maybe not necessarily differences in terms of 15 the types of services, but services would have, I'd 16 say, more cash activity, more variety of investments, 17 which triggers different types of activities going on 18 at those entities. 19 But similar in terms of tax operations, 20 making payments. HCRE didn't have employees, so no 21 payroll. So these would be the broad areas that I 22 would think about. 23 Q. And you mentioned making payments. Would one 24 of those services that Highland provided for these two 25 entities include making loan payments on the term loans</p>	108

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109	<p>1 they tend to get transitioned from Melissa to corporate                  2 accounting. And when they got really complex over to                  3 another group of fund accountants.                  4 So this is one that was, at its beginning,                  5 Melissa was the, called primary accountant. And at                  6 some point in time that transitioned to the corporate                  7 accounting team. I can't remember when the cash                  8 process kind of cut over.                  9 Q. Is there a list somewhere saying Melissa is                  10 responsible for these, Kristin for the others, or is it                  11 just more of a pattern or matter of practice?                  12 A. More of a matter of practice. If you're                  13 responsible for an entity, you're responsible. If                  14 you're not, then you're not.                  15 MR. AIGEN: That's all the questions I have.                  16 Thank you for your time.                  17 THE WITNESS: Thank you.                  18 EXAMINATION                  19 Q. (BY MR. MORRIS) Just a few, Mr. Klos. Let's                  20 pick up where Mr. Aigen left off.                  21 To the best of your knowledge, did HCMS have                  22 a shared services agreement with Highland?                  23 A. No, it didn't that I'm aware of.                  24 Q. But you described certain services that HCMLP                  25 provided to HCMS; is that right?</p>	111	<p>1 that was due at the end of the year?                  2 A. Yes, we continued to track it through our                  3 interest schedules and through cash.                  4 Q. So in the debtor's books and records is there                  5 any evidence that the payments that were made in early                  6 2019 were intended to relieve NexPoint's obligation to                  7 make the installment payment due at the end of the                  8 year?                  9 MR. RUKAVINA: Objection. Best evidence.                  10 THE WITNESS: No, I don't believe so.                  11 Q. (BY MR. MORRIS) Did you have a conversation                  12 with anybody at any time in the year 2019 about whether                  13 the payments made earlier in the year on behalf of                  14 NexPoint would eliminate or suspend its obligation --                  15 withdrawn.                  16 Did you have any conversation with anybody --                  17 I think I screwed up the dates. Going to have to start                  18 over.                  19 Let me ask better questions.                  20 You looked with Mr. Rukavina at certain                  21 payments that were made in early 2019 with respect to                  22 the NexPoint note.                  23 Do I have that right?                  24 A. Yes.                  25 Q. Notwithstanding those payments, did NexPoint</p>
110	<p>1 A. Yes.                  2 Q. Do you know whether HCMFA ever compensated --                  3 do you know whether HCMS ever compensated HCMLP for any                  4 of those services that HCMLP provided?                  5 A. No, it didn't.                  6 Q. You mentioned HCRE. To the best of your                  7 knowledge, did HCRE have a shared services agreement                  8 with Highland Capital Management, LP?                  9 A. No, it didn't.                  10 Q. Did HCRE provide the services that --                  11 withdrawn.                  12 Did HCMLP provide the services to HCRE that                  13 you just described?                  14 A. Yes.                  15 Q. Did HCRE ever compensate HCMLP for any of the                  16 services that HCMLP provided?                  17 A. No.                  18 Q. Okay. Mr. Rukavina asked you some questions                  19 about payments that were made on the NexPoint loan in                  20 the first half of 2019.                  21 Do you remember that?                  22 A. Yes, generally.                  23 Q. Okay. Notwithstanding those payments, did                  24 your group continue to carry on its books and records                  25 NexPoint's obligation to make the installment payment</p>	112	<p>1 make the installment payment that was due at the end of                  2 2019?                  3 MR. RUKAVINA: Objection. Calls for a legal                  4 conclusion.                  5 THE WITNESS: It did make the payment that                  6 was due at the end of 2019.                  7 Q. (BY MR. MORRIS) And the payment that it made                  8 at the end of 2019, was that the annual installment                  9 payment that was called for in the note itself?                  10 MR. RUKAVINA: Objection. Legal conclusion.                  11 THE WITNESS: Yes, it was a payment pursuant                  12 to the note.                  13 Q. (BY MR. MORRIS) Did anybody ever tell you at                  14 any time prior to the commencement of this lawsuit that                  15 any prior payment by or on behalf of NexPoint relieved                  16 it of any obligation to pay the installment payment due                  17 at the end of 2020?                  18 A. No.                  19 Q. And did in fact -- is it your understanding                  20 that Mr. Dondero specifically authorized Highland to                  21 effectuate a payment on NexPoint's behalf in mid                  22 January 2021?                  23 A. I don't have specific knowledge, but I know                  24 that to have occurred.                  25 Q. Okay. Did anybody ever tell you in 2021 --</p>

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113	<p>1 withdrawn.</p> <p>2 Did anybody tell you in December 2020 or</p> <p>3 December -- or January 2021 that NexPoint didn't have</p> <p>4 to make the installment payment at year end 2020</p> <p>5 because of some prior prepayment?</p> <p>6 A. No.</p> <p>7 Q. Can you think of any reason -- withdrawn.</p> <p>8 Did you ever hear Mr. Dondero -- withdrawn.</p> <p>9 Did you ever see anything in writing where</p> <p>10 NexPoint ever contended, prior to February 1, 2021,</p> <p>11 that it had no obligation to make the payment due at</p> <p>12 the end of 2020 because of some prepayment issue?</p> <p>13 A. No, not that I remember.</p> <p>14 Q. Can you think of any reason why Mr. Dondero</p> <p>15 would have authorized a payment by NexPoint to HCMLP on</p> <p>16 account of the note in January of 2021 if he actually</p> <p>17 believed at that time that no obligation was due</p> <p>18 because of a prior prepayment?</p> <p>19 MR. RUKAVINA: Objection. Speculation, lacks</p> <p>20 foundation.</p> <p>21 THE WITNESS: No.</p> <p>22 Q. (BY MR. MORRIS) Does it make any sense to</p> <p>23 you as an accountant that you would pay a seven-figure</p> <p>24 sum of money that you didn't think was due and owing?</p> <p>25 A. No, that does not make sense to me.</p>	115
114	<p>1 Q. Can you get Exhibit 13, please.</p> <p>2 A. Got it.</p> <p>3 Q. You were asked some questions about</p> <p>4 paragraph 3.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Does paragraph 3 mention annual installment</p> <p>8 payments at all?</p> <p>9 A. No, I'm not seeing it.</p> <p>10 Q. Does paragraph 3 state in any way that a</p> <p>11 prepayment as described in that paragraph would relieve</p> <p>12 the maker of the obligation to make annual installment</p> <p>13 payments?</p> <p>14 A. No.</p> <p>15 Q. Can you turn to the next page and look at</p> <p>16 paragraph 5.</p> <p>17 Are you familiar with that paragraph at all?</p> <p>18 A. No. I mean, I've seen it before, but this</p> <p>19 is, as I said before, this is a provision that probably</p> <p>20 would have been in most, if not all, of these types of</p> <p>21 notes.</p> <p>22 Q. Can you get Exhibit 3, please. This is your</p> <p>23 email dated May 2, 2019.</p> <p>24 Do I have that right?</p> <p>25 A. Yes.</p>	116

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117	<p>1 THE WITNESS: No.</p> <p>2 Q. (BY MR. MORRIS) Okay. And the next day</p> <p>3 there was another loan; right?</p> <p>4 A. Yes.</p> <p>5 Q. I'm going to show you here a document that's</p> <p>6 been produced.</p> <p>7 MR. RUKAVINA: Would you email it to me and I</p> <p>8 can print it out for the court reporter.</p> <p>9 MR. MORRIS: You want to come over here and</p> <p>10 look --</p> <p>11 MR. RUKAVINA: I know it. I'm just thinking</p> <p>12 that we can append it to the record right now.</p> <p>13 MR. MORRIS: It's eight pages, so it's part</p> <p>14 of a whole production.</p> <p>15 MR. RUKAVINA: But it's just one email?</p> <p>16 MR. MORRIS: Just one email that I'm talking</p> <p>17 about. So we're looking at Bates stamp D-CNL003763.</p> <p>18 And I'll email it to you when we're done here.</p> <p>19 And you're welcome to come over here if you'd like to</p> <p>20 see it.</p> <p>21 Q. (BY MR. MORRIS) Mr. Klos, can you take a</p> <p>22 look at the email that I have on my screen.</p> <p>23 A. Yes.</p> <p>24 Q. And do you see that it's an email from</p> <p>25 Kristin Hendrix to the corporate accounting group on</p>	119	<p>1 A. No.</p> <p>2 Q. Did anybody in the history of the world ever</p> <p>3 raise a question to you as to whether or not Kristin</p> <p>4 was authorized to paper the loan, as she describes it</p> <p>5 in this particular email?</p> <p>6 A. No.</p> <p>7 Q. Do you know if this \$5 million loan was also</p> <p>8 included in the debtor's audited financial statements?</p> <p>9 MR. RUKAVINA: Objection. Best evidence.</p> <p>10 THE WITNESS: Yes. Again, subsequent event.</p> <p>11 Q. (BY MR. MORRIS) Okay. And did anybody in</p> <p>12 the history of the world ever tell you that Highland</p> <p>13 should not have included as a subsequent event in its</p> <p>14 2018 audited financial statement this \$5 million loan?</p> <p>15 A. No.</p> <p>16 MR. RUKAVINA: Objection. Best evidence.</p> <p>17 THE WITNESS: No.</p> <p>18 Q. (BY MR. MORRIS) Do you know if HCMFA had its</p> <p>19 financial statements audited?</p> <p>20 A. It did.</p> <p>21 Q. And are you generally familiar with those</p> <p>22 financial statements?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware that these two loans totaling</p> <p>25 \$7.4 million were included in HCMFA's audited financial</p>
118	<p>1 Friday, May 3?</p> <p>2 A. Yes.</p> <p>3 Q. And were you also included in the corporate</p> <p>4 accounting email string?</p> <p>5 A. Yes.</p> <p>6 Q. Can you read the email out loud, please.</p> <p>7 A. It says, Blair, please set up a wire from</p> <p>8 HCMLP to HCMFA for 5 million as a new loan,</p> <p>9 parentheses, 4.4 million should be coming in from Jim</p> <p>10 soon. Hayley, please add this to your loan tracker. I</p> <p>11 will paper the loan.</p> <p>12 Q. So based on that email, did you understand on</p> <p>13 May 3 that HCMLP was going to loan \$5 million to HCMFA?</p> <p>14 A. Yes, HCMFA.</p> <p>15 Q. And did you understand that Kristin</p> <p>16 specifically told the corporate accounting group that</p> <p>17 she would take responsibility for papering the loan?</p> <p>18 A. Yes, that's what she says.</p> <p>19 Q. Do you recall whether Mr. Waterhouse ever</p> <p>20 objected to any aspect of Kristin's email?</p> <p>21 A. He didn't.</p> <p>22 Q. Do you recall in the history of the world</p> <p>23 whether Mr. Waterhouse ever told you that this</p> <p>24 \$5 million transaction should not have been booked as a</p> <p>25 loan?</p>	120	<p>1 statements as a subsequent event for the period ended</p> <p>2 December 31, 2018?</p> <p>3 A. Yes.</p> <p>4 MR. RUKAVINA: Objection. Best evidence.</p> <p>5 Q. (BY MR. MORRIS) Did anybody in the history</p> <p>6 of the world ever tell you that HCMFA should not have</p> <p>7 included as a subsequent event the borrowing of the</p> <p>8 money reflected in these loans?</p> <p>9 MR. RUKAVINA: Objection. Best evidence.</p> <p>10 THE WITNESS: No, no one said that.</p> <p>11 Q. (BY MR. MORRIS) Do you know if HCMFA</p> <p>12 included these loans as a liability on its balance</p> <p>13 sheet?</p> <p>14 A. It did.</p> <p>15 MR. RUKAVINA: Objection. Move to strike.</p> <p>16 Best evidence.</p> <p>17 Q. (BY MR. MORRIS) Did anyone in the history of</p> <p>18 the world ever tell you that HCMFA should not have</p> <p>19 included these loans as a liability on its balance</p> <p>20 sheet?</p> <p>21 MR. RUKAVINA: Objection. Best evidence.</p> <p>22 THE WITNESS: No.</p> <p>23 Q. (BY MR. MORRIS) Okay. Do you recall that in</p> <p>24 October of 2020 HCMFA and NexPoint made a report to the</p> <p>25 retail board?</p>

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121	<p>1 A. Yes.</p> <p>2 Q. And are you aware that that's part of the</p> <p>3 annual review process?</p> <p>4 A. Yes, it's the 15(c) process.</p> <p>5 Q. By the way, as we're talking about these</p> <p>6 issues, did Mr. Waterhouse have -- was he an officer of</p> <p>7 HCMFA in 2019 and 2020?</p> <p>8 A. Yes.</p> <p>9 Q. And what's your understanding as to the</p> <p>10 office he held?</p> <p>11 A. Treasurer, I believe.</p> <p>12 Q. And do you know if Mr. Dondero held an</p> <p>13 officer position with respect to each of the Advisors?</p> <p>14 A. He did.</p> <p>15 Q. What position did he hold?</p> <p>16 A. I don't recall with certainty, but I believe</p> <p>17 president.</p> <p>18 Q. As officers of those two entities, do you</p> <p>19 have any knowledge as to whether they participated in</p> <p>20 the communications with the retail board in the fall of</p> <p>21 2020?</p> <p>22 A. I believe Jim and Frank both did.</p> <p>23 Q. And do you know whether the retail board</p> <p>24 asked the Advisors for a report on all obligations due</p> <p>25 and owing to HCMLP and affiliates?</p>	123
122	<p>1 A. They asked for financials, I believe as of</p> <p>2 6/30 as part of that process.</p> <p>3 Q. And are you aware as to whether or not the</p> <p>4 financials that were provided to the retail board</p> <p>5 included, among other things, the \$7.4 million in notes</p> <p>6 that were -- that we're talking about here?</p> <p>7 A. Yes, those financials would have included</p> <p>8 those amounts as liabilities to HCMLP.</p> <p>9 Q. Did Mr. Dondero or Mr. Waterhouse ever tell</p> <p>10 you or anybody to your knowledge that the Advisors</p> <p>11 should not have told the retail boards that they were</p> <p>12 obligated to pay under those two notes?</p> <p>13 A. No.</p> <p>14 Q. Let's talk about loan forgiveness for a</p> <p>15 moment.</p> <p>16 How long have you been with the company?</p> <p>17 A. March of 2009.</p> <p>18 Q. At any time since you've been employed by</p> <p>19 Highland, has Highland ever forgiven a promissory note</p> <p>20 that it held where the maker was a corporate affiliate?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. Have you ever heard prior -- has anybody ever</p> <p>23 told you that before you joined the company, Highland</p> <p>24 had ever forgiven in whole or in part any note that it</p> <p>25 held where the maker was a corporate affiliate?</p>	124

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125	<p>1 A. Yeah, that was the effective date on all</p> <p>2 three.</p> <p>3 Q. And they all rolled up previously outstanding</p> <p>4 notes that were due and payable to Highland.</p> <p>5 Do I have that right?</p> <p>6 A. Correct. To the best of my recollection.</p> <p>7 Q. So we'll refer to those notes as the term</p> <p>8 notes. Is that okay?</p> <p>9 A. Sure.</p> <p>10 Q. Do you have any knowledge that Mr. Dondero or</p> <p>11 Mr. Waterhouse ever instructed HCMLP to make the</p> <p>12 installment payments that were due at the end of 2020</p> <p>13 with respect to any of those term notes?</p> <p>14 A. No, I don't believe they provided that</p> <p>15 instruction to make those payments.</p> <p>16 MR. RUKAVINA: Objection. Move to strike.</p> <p>17 Lacks foundation.</p> <p>18 MR. MORRIS: I'm asking him if he ever heard.</p> <p>19 MR. RUKAVINA: But he answered a different</p> <p>20 question. He answered a different question.</p> <p>21 Q. (BY MR. MORRIS) Did you ever see anything in</p> <p>22 writing where either Mr. Dondero or Mr. Waterhouse</p> <p>23 directed HCMLP to make the annual installment payments</p> <p>24 that were due at the end of 2020 with respect to any of</p> <p>25 the term notes?</p>	127	<p>1 FURTHER EXAMINATION</p> <p>2 Q. (BY MR. RUKAVINA) Go to Exhibit 16, please,</p> <p>3 1-6.</p> <p>4 A. Sure.</p> <p>5 Q. Sir, this is an email string regarding that</p> <p>6 Rule 15(c) that you were talking about. I'm just going</p> <p>7 to ask you about the top email, but you're welcome to</p> <p>8 read the whole.</p> <p>9 A. Uh-huh.</p> <p>10 Q. You're copied on Mr. Waterhouse's email there</p> <p>11 October 6, 2020; right?</p> <p>12 A. Yes, I'm on the email.</p> <p>13 Q. And Mr. Waterhouse writes, the HCMFA note is</p> <p>14 a demand note. You would have read that; right?</p> <p>15 A. Yes.</p> <p>16 Q. Did you ever correct Mr. Waterhouse when he</p> <p>17 says the HCMFA note, as opposed to notes?</p> <p>18 A. No, that's not something I would have</p> <p>19 corrected from Frank.</p> <p>20 Q. Do you recall right now that you might have,</p> <p>21 when you read this, realized that he made a mistake?</p> <p>22 A. It would have been such a de minimus,</p> <p>23 inconsequential mistake that I don't know that I would</p> <p>24 have addressed it.</p> <p>25 Q. What about two sentences over, there was an</p>
126	<p>1 A. No.</p> <p>2 Q. Okay. But to the best of your recollection,</p> <p>3 in the 13-week forecast, those forecasts included the</p> <p>4 installment payments that were due at the end of the</p> <p>5 year; is that right?</p> <p>6 A. They did.</p> <p>7 Q. Did anybody ever tell you prior to</p> <p>8 February 1, 2021, that your group had made a mistake by</p> <p>9 not making the payment -- any of the payments that were</p> <p>10 due under the term notes at the end of 2020?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Did anybody tell you prior to February 1,</p> <p>13 2021, that the makers of the term notes expected</p> <p>14 Highland to effectuate the payments that were due at</p> <p>15 the end of the year without approval by Mr. Waterhouse</p> <p>16 or Mr. Dondero?</p> <p>17 A. No.</p> <p>18 Q. Have you seen any protest in writing prior to</p> <p>19 the commencement of the litigation by any of the makers</p> <p>20 of the notes about a failure on the part of HCMLP to</p> <p>21 perform its duties and make that payment at the end of</p> <p>22 the year?</p> <p>23 A. No.</p> <p>24 MR. MORRIS: I have no further questions.</p> <p>25 MR. RUKAVINA: I have five minutes.</p>	128	<p>1 agreement between HCMLP and HCMFA the earliest they</p> <p>2 could demand is May 2021.</p> <p>3 Did you ever write to him and say that too</p> <p>4 was a mistake?</p> <p>5 A. I didn't write to him.</p> <p>6 Q. Did you realize back then when you read it</p> <p>7 that he had made a mistake?</p> <p>8 A. I'm not certain.</p> <p>9 Q. Did you -- and I'm not suggesting that you</p> <p>10 should have. You're a busy man. But did you attach</p> <p>11 any significance outside of the ordinary to this email</p> <p>12 exchange?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: I struggle with how to answer</p> <p>16 that. I saw that this note was in response to retail</p> <p>17 15(c) follow-up on the Advisors.</p> <p>18 At this point my role was different, where I</p> <p>19 was dealing with really the retail funds primarily. So</p> <p>20 the fact that I'm even on this email is somewhat</p> <p>21 incidental.</p> <p>22 Q. (BY MR. RUKAVINA) But surely on October 6,</p> <p>23 2020 you knew that there were four HCMFA demand notes,</p> <p>24 didn't you?</p> <p>25 A. I'm sure I would have had access to that</p>

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129	<p>1 information. I'm not sure that I was keeping track of</p> <p>2 how many were outstanding at any given point in time.</p> <p>3 Q. And surely on October 6, 2020 you knew that</p> <p>4 only two of them couldn't be demanded by May of 2021,</p> <p>5 didn't you?</p> <p>6 A. Again, I don't know that I was even really</p> <p>7 thinking about these notes at that time.</p> <p>8 Q. Even though you were preparing weekly cash</p> <p>9 forecasts for Mr. Seery?</p> <p>10 A. I wasn't preparing a weekly cash forecast for</p> <p>11 Mr. Seery.</p> <p>12 Q. Going to Exhibit 13, please. Mr. Morris</p> <p>13 asked you a couple questions about this.</p> <p>14 A. I'm sorry, 13?</p> <p>15 Q. Yes, sir. And again, that paragraph 3 that</p> <p>16 talks about prepayment.</p> <p>17 Can you find anything in here, sir, that says</p> <p>18 that a prepayment does not relieve the maker of any</p> <p>19 regularly scheduled payment?</p> <p>20 A. Sorry, that's a lot to comprehend. If you</p> <p>21 could ask again.</p> <p>22 Q. Is there any provision that you can see here</p> <p>23 that's to the effect that a prepayment will not relieve</p> <p>24 the maker of any regularly scheduled payment?</p> <p>25 A. I don't see that specific provision. I just</p>	131
130	<p>1 read it for what is on the page.</p> <p>2 Q. Isn't it, sir, in your experience the case</p> <p>3 that a promissory note, if it intended not to relieve</p> <p>4 the borrower of regularly scheduled payments would say</p> <p>5 that a prepayment does not relieve the borrower of</p> <p>6 regularly scheduled payments?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: That's a legal question. I</p> <p>10 can't -- I don't know the answer.</p> <p>11 Q. (BY MR. RUKAVINA) Do you remember seeing</p> <p>12 promissory notes that say something like that?</p> <p>13 A. Not that I can recall.</p> <p>14 Q. You'd be surprised if that's what promissory</p> <p>15 notes say?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 Q. (BY MR. RUKAVINA) And Mr. Morris asked you</p> <p>20 about this. I'm trying to burn through this so the man</p> <p>21 can make his plane.</p> <p>22 Section 2.1 talks about 30 equal annual</p> <p>23 payments, annual installments.</p> <p>24 You see that?</p> <p>25 A. Yes, I see that.</p>	132
129	<p>1 Q. And Mr. Morris asked you whether you see</p> <p>2 anything in here that says that a prepayment relieves</p> <p>3 an annual installment.</p> <p>4 Do you remember that question?</p> <p>5 MR. MORRIS: Objection. That's not what I</p> <p>6 asked.</p> <p>7 THE WITNESS: I don't remember that question.</p> <p>8 Q. (BY MR. RUKAVINA) Reading Section 2.1 and 3</p> <p>9 together, what would a prepayment apply to other than</p> <p>10 an annual installment? Do you have a view on that?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: Again, I struggle with</p> <p>14 prepayment. But as I read Section 3, it would be</p> <p>15 applied first to unpaid accrued interest and then to</p> <p>16 unpaid principal.</p> <p>17 Q. (BY MR. RUKAVINA) Have you ever in your</p> <p>18 personal life prepaid a promissory note before -- have</p> <p>19 you ever in your personal life prepaid a promissory</p> <p>20 note prior to its maturity?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: I don't know.</p> <p>24 Q. (BY MR. RUKAVINA) Sitting here today, with</p> <p>25 your CPA, your MBA and you're a CFO of a large entity,</p>	131



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133	<p>1 MR. RUKAVINA: And I asked you on the basis</p> <p>2 of what privilege are you instructing your --</p> <p>3 MR. MORRIS: Argumentative.</p> <p>4 MR. RUKAVINA: That's not a privilege.</p> <p>5 MR. MORRIS: Sir, you can rephrase your</p> <p>6 question and end this right now by not being insulting</p> <p>7 to my client.</p> <p>8 Q. (BY MR. RUKAVINA) I was not trying to be</p> <p>9 insulting, sir.</p> <p>10 I'm asking you again, you do not, sitting</p> <p>11 here today, have an understanding of what the word</p> <p>12 "prepayment" for a promissory note means?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 You can answer that one.</p> <p>16 THE WITNESS: In the context that you're</p> <p>17 asking the question --</p> <p>18 Q. (BY MR. RUKAVINA) No, I'm not asking any</p> <p>19 context. Sitting here today, do you have an</p> <p>20 understanding of what the word "prepayment" means when</p> <p>21 it comes to a borrower/lender relationship?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: Yes, I have a general</p> <p>25 understanding.</p>	135	<p>1 payment made prior to the time that it's due?</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: Yes, in the most general sense</p> <p>5 a prepayment, the prefix "pre" indicates that it's</p> <p>6 before some other event. So from that standpoint,</p> <p>7 prepayment means it was to some extent paid early.</p> <p>8 MR. RUKAVINA: Thank you.</p> <p>9 Pass the witness.</p> <p>10 MR. MORRIS: No further questions.</p> <p>11 Michael?</p> <p>12 MR. AIGEN: No questions.</p> <p>13 THE REPORTER: Mr. Morris, do you want a copy</p> <p>14 of the transcript?</p> <p>15 MR. MORRIS: I sure do.</p> <p>16 THE REPORTER: Mr. Aigen, do you want a copy</p> <p>17 of the transcript?</p> <p>18 MR. AIGEN: Yes, we would also like a copy.</p> <p>19 MR. MORRIS: Yeah, and I'd like that rush.</p> <p>20 (Whereupon, the deposition adjourned at</p> <p>21 5:14 P.M.)</p> <p>22 --oOo--</p> <p>23 I declare under penalty of perjury that the</p> <p>24 foregoing is true and correct. Subscribed at</p> <p>25 _____, Texas, this ____ day of</p>
134	<p>1 Q. (BY MR. RUKAVINA) What is your</p> <p>2 understanding?</p> <p>3 A. That -- you can look at the note.</p> <p>4 Q. I'm not asking about the note. We got to go</p> <p>5 step by step.</p> <p>6 What is your general understanding as to what</p> <p>7 a prepayment means?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: It depends on the context and</p> <p>11 it's going to depend on what the note says about</p> <p>12 prepayments. So I have a hard time answering that</p> <p>13 question.</p> <p>14 Q. (BY MR. RUKAVINA) So you would agree with me</p> <p>15 that you have to look at the note before you can answer</p> <p>16 that question?</p> <p>17 MR. MORRIS: Objection to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: I would want to look at the</p> <p>20 note before I answer the question, because prepayment</p> <p>21 is a term that can be used as a defined term or in a</p> <p>22 casual sense, and those two can sometimes get confused</p> <p>23 and misconstrued.</p> <p>24 Q. (BY MR. RUKAVINA) Would you agree with me</p> <p>25 that in any and all circumstances a prepayment is a</p>	136	<p>1 _____, 2021.</p> <p>2</p> <p>3</p> <p>4 _____</p> <p>5 DAVID KLOS</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">137</p> <p>1            CERTIFICATE OF REPORTER  2            I, BRANDON D. COMBS, a Certified Shorthand  3 Reporter, hereby certify that the witness in the  4 foregoing deposition was by me duly sworn to tell the  5 truth, the whole truth, and nothing but the truth in the  6 within-entitled cause;  7            That said deposition was taken in shorthand by  8 me, a disinterested person, at the time and place  9 therein stated, and that the testimony of the said  10 witness was thereafter reduced to typewriting, by  11 computer, under my direction and supervision;  12            That before completion of the deposition,  13 review of the transcript was not requested. If  14 requested, any changes made by the deponent (and  15 provided to the reporter) during the period allowed are  16 appended hereto.  17            I further certify that I am not of counsel or  18 attorney for either or any of the parties to the said  19 deposition, nor in any way interested in the event of  20 this cause, and that I am not related to any of the  21 parties thereto.  22            <b>DATED:</b> November 1, 2021  23  24            _____  25            Brandon Combs, Certified Shorthand</p>	
<p style="text-align: right;">138</p> <p>1            State of Texas  2            Dickman Davenport, Inc. Cert 312  3            4228 North Central Expressway  4            Suite 101, Dallas, TX 75206  5            (214) 855-5100 (800) 445-9548  6            Email: info@dickmandavenport.com  7            www.dickmandavenport.com  8            My commission expires 1-31-23  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	

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## **EXHIBIT 22**

**December 2019 Due From Affiliates**

14585 DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	\$	57,963,118
14532 DUE FROM NEXPOINT ADVISORS		23,034,644
14750 LONG TERM NOTES RECEIVABLE		18,286,268
14531 DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS		10,413,540
14533 DUE FROM HCRE PARTNERS		10,192,686
14565 DUE FROM OTHER - TAX LOANS		9,946,805
14530 DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES		7,543,781
14590 DUE FROM OTHER AFFILIATE		5,088,256
14595 DUE FROM HIGHLAND CAPITAL KOREA		3,132,278
14140 SHARED SVCS FEE RECVBL - PYXIS		298,283
14010 CASH INTEREST RECEIVABLE		285,626
14580 DUE FROM NEXBANK		60,000
<b>Total Due From Affiliates</b>	<b>\$</b>	<b>146,245,285</b>

## **EXHIBIT 23**

**September 2020 Due From Affiliates**

14585 DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	\$	57,963,118
14532 DUE FROM NEXPOINT ADVISORS		23,610,195
14750 LONG TERM NOTES RECEIVABLE		18,286,268
14531 DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS		10,635,564
14533 DUE FROM HCRE PARTNERS		10,436,597
14565 DUE FROM OTHER - TAX LOANS		8,929,625
14530 DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES		7,518,692
14590 DUE FROM OTHER AFFILIATE		5,088,256
14595 DUE FROM HIGHLAND CAPITAL KOREA		3,832,358
14536 DUE FROM SELECT		3,000,000
14010 CASH INTEREST RECEIVABLE		2,718,375
14140 SHARED SVCS FEE RECVBL - PYXIS		308,093
14137 SHARED SVCS FEE RECVBL - OSLI		122,000
14580 DUE FROM NEXBANK		60,000
14148 SHARED SVCS FEE RECVBL - RAND ADVISORS		40,182
14142 SHARED SVCS FEE RECVBL - HCLOH		24,592
14535 DUE FROM HERA		10,676
<b>Total Due From Affiliates</b>	<b>\$</b>	<b>152,584,592</b>

## **EXHIBIT 24**

**January 2021 Due From Affiliates**

14585-DUE FROM HUNTER MOUNTAIN INVESTMENT TRUST	\$	59,480,100
14532-DUE FROM NEXPOINT ADVISORS		23,034,644
14750-LONG TERM NOTES RECEIVABLE		18,286,268
14531-DUE FROM HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS		10,635,564
14533-DUE FROM HCRE PARTNERS		10,604,952
14565-DUE FROM OTHER - TAX LOANS		8,929,625
14530-DUE FROM HIGHLAND CAPITAL MANAGEMENT SERVICES		7,518,692
14536-DUE FROM SELECT		4,818,153
14595-DUE FROM HIGHLAND CAPITAL KOREA		3,832,358
14590-DUE FROM OTHER AFFILIATE		2,651,256
14010-CASH INTEREST RECEIVABLE		1,111,875
14140-SHARED SVCS FEE RECVBL - PYXIS		894,280
14146-SHARED SVCS FEE RECVBL - NEXPOINT		336,000
14149-SHARED SVCS FEE RECVBL - NREA		160,000
14137-SHARED SVCS FEE RECVBL - OSLI		122,000
14580-DUE FROM NEXBANK		80,000
14142-SHARED SVCS FEE RECVBL - HCLOH		31,179
14535-DUE FROM HERA		10,676
<b>Total Due From Affiliates</b>	<b>\$</b>	<b>152,537,622</b>

## **EXHIBIT 25**

Loan Summary		
HCMLP to HCMSI (GL 14530) - Outstanding Loans	Date	Principal Amount
HCMSI Restructure	5/31/2017	6,572,061
HCMSI #46	3/26/2018	158,777
HCMSI #47	6/25/2018	212,403
HCMSI #48	5/29/2019	409,586
HCMSI #49	6/26/2019	153,565
BW Salary Recievable	12/31/2019	12,301
	Sub-total	7,518,692
<b>Total HCMSI Debt to HCM Outstanding</b>		<b>7,518,692</b>
<b>Total HCMSI Debt per GL</b>		<b>7,518,692</b>
	Reconciled Total	7,518,692
	Unreconciled Difference	-
HCMLP to HCMFA (GL 14531) - Outstanding Loans	Date	Principal Amount
HCMFA #2	2/26/2014	2,092,825
HCMFA #5	2/26/2016	965,395
HCMFA #6	5/2/2019	2,457,517
HCMFA #7	5/3/2019	5,119,827
	Sub-total	10,635,564
<b>Total HCMFA Debt to HCM Outstanding</b>		<b>10,635,564</b>
<b>Total HCMFA Debt per GL</b>		<b>10,635,564</b>
	Reconciled Total	10,635,564.44
	Unreconciled Difference	-
HCMLP to NexPoint Advisors (GL 14532) - Outstanding Loans	Date	Principal Amount
NexPoint Restructure	5/31/2017	23,034,644
	Sub-total	23,034,644
<b>Total NexPoint Debt to HCM Outstanding</b>		<b>23,034,644</b>
<b>Total NexPoint Debt per GL</b>		<b>23,034,644</b>
	Reconciled Total	23,034,644
	Unreconciled Difference	0.00
HCMLP to HCRE (GL 14533) - Outstanding Loans	Date	Principal Amount
HCRE #9	11/27/2013	-
HCRE Restructure	5/31/2017	5,829,776
HCRE #10	10/12/2017	3,149,919
HCRE #11	10/15/2018	874,978
HCRE #12	9/25/2019	750,279
	Sub-total	10,604,952
<b>Total HCRE Debt to HCM Outstanding</b>		<b>10,604,952</b>
<b>Total HCRE Debt per GL</b>		<b>10,604,952</b>
	Reconciling Items Compound Interest	-
	Reconciled Total	10,604,951.61
	Unreconciled Difference	0.01
HCMLP Partner Tax Loans (GL 14565) - Outstanding Loans	Date	Principal Amount
Dondero #4	2/2/2018	3,687,270
Dondero #5	8/1/2018	2,619,929
Dondero #6	8/13/2018	2,622,426
	Sub-total	8,929,625
<b>Total Partner Debt to HCM Outstanding</b>		<b>8,929,625</b>
<b>Total Partner Debt per GL</b>		<b>8,929,625</b>
Reconciling Items		
	Reconciled Total	8,929,624.74
	Unreconciled Difference	-
Get Good Loan (GL 14750) - Outstanding Loans	Date	Principal Amount
Dugaboy Restructure	5/31/2017	18,286,268
	Sub-total	18,286,268
<b>Total Partner Debt to HCM Outstanding</b>		<b>18,286,268</b>
<b>Total Partner Debt per GL</b>		<b>18,286,268</b>
Reconciling Items		
	Reconciled Total	18,286,268.16
	Unreconciled Difference	-



## **EXHIBIT 26**

**From:** Kristin Hendrix <KHendrix@HighlandCapital.com>

**To:** Jim Dondero <JDondero@HighlandCapital.com>

**Cc:** Frank Waterhouse <FWaterhouse@HighlandCapital.com>

**Subject:** 7/31/2020 HCMLP Requests

**Date:** Sat, 29 Aug 2020 14:47:29 -0500

**Importance:** Normal

**Attachments:** HCMLP\_07\_31\_2020\_SOI.pdf; HCMLP\_Notes\_Receivable\_07\_31\_2020.pdf;  
HCMLP\_Equity.pdf

**Inline-Images:** image001.jpg

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Hi Jim,

Please see attached data you had requested for HCMLP.

- 7/31/2020 SOI
- 7/31/2020 affiliate notes
- Oct 2019 – July 2020 equity balances

Please let us know if you have any questions or need anything else.

Thanks,

Kristin

Kristin Hendrix, CPA | Assistant Controller



300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628.4127 | F: 972.628.4147

[khendrix@highlandcapital.com](mailto:khendrix@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)



**HCMLP Equity**  
**10/31/19 - 7/31/20**  
**(all values in millions)**

The table content is completely redacted with black bars, obscuring all data points.

**HCMLP Notes Receivable****As of 7/31/2020**

NexPoint Advisors	\$	23,846,944	30 yr Amort (issued 2017)
Dugaboy		17,788,532	30 yr Amort (issued 2017)
Highland Capital Management Services		6,677,529	30 yr Amort (issued 2017)
HCRE		5,938,670	30 yr Amort (issued 2017)
Trussway		1,004,993	Due upon maturity - 11/1/2021
SSP Holdings, LLC		2,037,898	Due upon maturity - 11/22/2022
Siepe		2,334,606	Equity conversion option
Highland Capital Management Fund Advisors		10,530,971	Demand
James Dondero		8,911,977	Demand
Multi-Strategy Credit Fund		1,269,000	Demand
HCRE		4,859,929	Demand
Highland Select Equity Fund		3,000,000	Demand
Highland Capital Management Korea		3,760,000	Due upon maturity - 4/21/2037
Highland Capital Management Services		934,331	Demand
<b>Total Notes Receivable</b>	<b>\$</b>	<b>92,895,380</b>	

<b>Demand</b>	<b>29,506,208</b>
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## **EXHIBIT 27**

**From:** Kristin Hendrix <KHendrix@HighlandCapital.com>

**To:** Jim Dondero <JDondero@HighlandCapital.com>

**Cc:** Frank Waterhouse <FWaterhouse@HighlandCapital.com>, David Klos  
<DKlos@HighlandCapital.com>

**Subject:** RE: HCMLP Schedule of Investments

**Date:** Mon, 27 Apr 2020 18:21:21 -0500

**Importance:** Normal

**Attachments:** HCMLP\_03\_31\_2020\_SOI.pdf; Look\_through\_of\_HF\_interests\_3.31.20.pdf;  
HCMLP\_Notes\_Receivable\_&\_Other\_Net\_Working\_Capital\_Listing\_03\_31\_2020.pdf;  
HCMLP\_Internal\_Jefferies\_4.24.20.pdf

**Inline-Images:** image001.jpg; image002.jpg

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Jim,

Revised schedules are attached with the latest updates.

Thanks,

Kristin

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**From:** Kristin Hendrix

**Sent:** Monday, April 27, 2020 5:25 PM

**To:** Jim Dondero

**Cc:** Frank Waterhouse ; David Klos

**Subject:** RE: HCMLP Schedule of Investments

Jim,

Attached are updated files, per your earlier conversation with Dave and Frank. Let us know how else we can help.

Thanks,

Kristin

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**From:** Kristin Hendrix

**Sent:** Monday, April 27, 2020 3:20 PM

**To:** Jim Dondero <[JDondero@HighlandCapital.com](mailto:JDondero@HighlandCapital.com)>

**Cc:** Frank Waterhouse <[FWaterhouse@HighlandCapital.com](mailto:FWaterhouse@HighlandCapital.com)>; David Klos  
<[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

**Subject:** HCMLP Schedule of Investments

Hi Jim,

I hope you are doing well!

We are sending over a HCMLP SOI, as of 3/31, along with a look through detail to the hedge fund ownership. Please note that the HCMLP investments held at Jefferies are shown gross of their borrow. I have noted those on the schedule. Let us know if you have any questions.

Thanks,

Kristin

Kristin Hendrix, CPA | Senior Manager, Corporate Accounting



300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628.4127 | F: 972.628.4147

[khendrix@highlandcapital.com](mailto:khendrix@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)













## **EXHIBIT 28**



HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT FUND  
ADVISORS, L.P.,

Defendant.

Adv. Proc. No. 21-3004

Case No. 3:21-cv-00881-X

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

NEXPOINT ADVISORS, L.P., JAMES  
DONDERO, NANCY DONDERO, AND  
THE DUGABOY INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3005

Case No. 3:21-cv-00880-C

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

HIGHLAND CAPITAL MANAGEMENT  
SERVICES, INC., JAMES DONDERO,  
NANCY DONDERO, AND THE DUGABOY  
INVESTMENT TRUST,

Defendants.

Adv. Proc. No. 21-3006

Case No. 3:21-cv-01378-N





**A. NexPoint Advisors, LP's ("NexPoint") Prepayment Defense**

3. I understand that NexPoint contends that it had no obligation to make the Annual Installment payment due on December 31, 2020 under the NexPoint Note because it “pre-paid.” Two documents show that NexPoint is mistaken.

4. The first document is the NexPoint Note, a true and correct copy of which is attached hereto as **Exhibit A**.<sup>2</sup> Under the NexPoint Note, NexPoint was required to make “Annual Installment” payments on December 31 of each year equal to (i) all unpaid accrued interest, *plus* (ii) 1/30<sup>th</sup> of the outstanding principal amount of the NexPoint Note. **Exhibit A** ¶2.1.

5. NexPoint was permitted to make “prepayments” under the NexPoint Note. Section 3 of the NexPoint Note sets forth NexPoint’s agreement concerning the treatment of “prepayments” and provides:

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. **Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.**

**Exhibit A** ¶ 3 (emphasis added).

6. The second relevant document is an amortization schedule (the “Amortization Schedule”) that was prepared and maintained in the ordinary course of Highland’s business, a true and correct copy of which is attached hereto as **Exhibit B**.<sup>3</sup> I understand that the Amortization Schedule is the only document that NexPoint relies upon to support its “prepayment defense.”

7. The Amortization Schedule shows, among other things, the following:

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<sup>2</sup> The NexPoint Note is also included as Highland’s Ex. 2 (Exhibit 1),

<sup>3</sup> The Amortization Schedule is also included as Highland’s Ex. 200.

- The “Interest Accrual” column shows the periodic interest that accrued under the NexPoint Note between the dates described in the “Date” column;
- The “Total Paid” column shows the amount NexPoint paid against the NexPoint Note<sup>4</sup>; and
- The “Interest Paid” and “Principal Paid” columns show how each payment was applied.

8. As the Amortization Schedule shows, (a) between October 20, 2017 and August 13, 2019, NexPoint made twelve (12) payments that could broadly be characterized as unscheduled “prepayments” of principal and/or interest (the “Prepayments”)<sup>5</sup>, and (b) with one exception, each of the Prepayments was applied first to reduce or eliminate all accrued and outstanding interest and then to unpaid principal, as required by Section 3 of the NexPoint Note.<sup>6</sup>

9. As can also be seen on the Amortization Schedule, *notwithstanding the Prepayments*, NexPoint was still required to make additional payments against the NexPoint Note in December of 2017, 2018, and 2019, in order to reduce “Accrued Interest” to \$0 as of December 31 in each year<sup>7</sup> as required by Section 2.1 of the NexPoint Note, which it did in each instance.

10. Indeed, even though NexPoint made six (6) Prepayments totaling \$6.38 million between March 29 and August 13, 2019, NexPoint was still required to pay \$530,112.36 to fully

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<sup>4</sup> Note that for the interest payment made December 30, 2019, interest of \$530,112.36 was paid in cash and is reflected on the “Interest Paid” column. The amount is omitted from the “Total Paid” column but has no bearing on the actual calculations contained in the Amortization Schedule. For avoidance of doubt, \$530,112.36 of interest was paid to Highland from NexPoint on December 30, 2019.

<sup>5</sup> For the avoidance of doubt, NexPoint made the Prepayments on October 20, 2017, April 10, 2018, May 1, 2018, May 9, 2018, September 5, 2019, September 21, 2019, March 29, 2019, April 16, 2019, June 4, 2019, June 19, 2019, July 9, 2019, and August 13, 2019. *See generally* Ex. B.

<sup>6</sup> The exception is the Prepayment made on May 9, 2018, which prepaid approximately six (6) months of future interest.

<sup>7</sup> NexPoint made payments against the NexPoint Note on December 5, 2017, December 18, 2018, and December 30, 2019, respectively, which reduced “Accrued Interest” to \$0 as of December 31 in each of those years in order to comply with Section 2.1 of the NexPoint Note.

satisfy its obligation to make the unpaid interest portion of the Annual Installment payment due as of December 31, 2019, which it did.

11. As the Amortization Schedule shows, NexPoint did not make any Prepayments on account of the NexPoint Note in 2020. Thus, as of December 31, 2020, NexPoint was required to make an Annual Installment payment on December 31 equal to (i) all unpaid accrued interest, *plus* (ii) 1/30<sup>th</sup> of the outstanding principal amount of the NexPoint Note (the “2020 Annual Installment”). Exhibit A ¶2.1.

12. NexPoint knew the 2020 Annual Installment was due on December 31, 2020 because it was included in a 13-week forecast that Highland’s Corporate Accounting Group updated on a weekly basis and that was provided to (among others) Frank Waterhouse, NexPoint’s Treasurer and then Highland’s CFO. *See, e.g., Exhibit C* (a true and correct copy of a 13-week forecast prepared for the 13-week period commencing December 14, 2020) Exhibit C shows that Operating Receipts of \$2.051 million was due on December 28, 2020 in connection with “Interest Receipts on notes receivable,” an amount that included the Required Payment).<sup>8</sup>

13. NexPoint failed to make the 2020 Annual Installment due on December 31, 2020 as required under Section 2.1 of the NexPoint Note.

14. On January 14, 2021, after Highland sent notice of default, NexPoint paid Highland \$1,406,111.92. **Exhibit B** (entry dated 1/14/21).

## **B. Highland’s Loan Summaries**

15. Highland’s accounting group has a regular practice of creating and maintaining “loan summaries” in the ordinary course of business (the “Loan Summaries”). The Loan

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<sup>8</sup> This 13-week forecast is also included as Highland’s Ex. 58 and is just an example. For years, the accounting group prepared a 13-week forecast that was updated weekly so that everyone knew what payments and receipts were anticipated.

Summaries identify amounts owed to Highland under affiliate notes and are created by updating underlying schedules for activity and reconciling with Highland’s general ledger. Ex. 199 is an example of a Loan Summary. The Loan Summaries identify each Obligor by reference to the “GL” number used in the general ledger. *See* Ex. 199 (HCMS (“GL 14530”), HCMFA (“GL 14531”), NexPoint (“GL 14532”), HCRE (“GL 14533”), and Mr. Dondero (“GL 14565”)).

16. The Loan Summaries were used in connection with the PwC audits and to support accounting entries and year-end balances in the ordinary course of Highland’s business. For example, Ex. 199 ties exactly into Ex. 198, the “back up” to the “Due from affiliates” entry in the January 2021 MOR. Docket No. 2020.<sup>9</sup>

**C. The Notes**

17. In the ordinary course of business, Highland had (and continues to have) a regular practice of maintaining electronic copies of all promissory notes issued by any officer, employee, or corporate affiliate.

18. Attached as **Exhibit D** is a true and correct copy of a promissory note dated February 2, 2018, executed by James Dondero, as the maker, in the original principal amount of \$3,825,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “First Dondero Note”).

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<sup>9</sup> Colloquially, the Loan Summaries are the “back up” to the “back up.” To illustrate, and working backwards, the January 2021 MOR reported that \$152,538,000 was “Due from affiliates.” Docket No. 2030 (balance sheet). Ex. 198 is the “back up” to the January 2021 MOR and it shows that \$152,537,622 was the “Total Due from Affiliates” (the January 2021 MOR rounded up to the nearest thousand). Ex. 199, the Loan Summary, is the “back up” to the “back up,” and is reconciled with Highland’s general ledger. As can be seen, the Loan Summary specifies the outstanding principal amounts due under each Note. Interest on these notes is accrued in a single account (general ledger account 14010).

19. Attached as **Exhibit E** is a true and correct copy of a promissory note dated August 1, 2018, executed by James Dondero, as the maker, in the original principal amount of \$2,500,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “Second Dondero Note”).

20. Attached as **Exhibit F** is a true and correct copy of a promissory note dated August 13, 2018, executed by James Dondero, as the maker, in the original principal amount of \$2,500,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “Third Dondero Note,” and together with the First Dondero Note and Second Dondero Note, the “Dondero Notes”).

21. Attached as **Exhibit G** is a true and correct copy of a promissory note dated May 2, 2019, executed by HCMFA, as the maker, in the original principal amount of \$2,400,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “First HCMFA Demand Note”).

22. Attached as **Exhibit H** is a true and correct copy of a promissory note dated May 3, 2019, executed by HCMFA, as the maker, in the original principal amount of \$5,000,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “Second HCMFA Demand Note,” and together with the First HCMFA Note, the “HCMFA Demand Notes”).

23. Attached as **Exhibit I** is a true and correct copy of a promissory note dated March 28, 2018, executed by HCMS, as the maker, in the original principal amount of \$150,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “First HCMS Demand Note”).

24. Attached as **Exhibit J** is a true and correct copy of a promissory note dated June 25, 2018, executed by HCMS, as the maker, in the original principal amount of \$200,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “Second HCMS Demand Note”).

25. Attached as **Exhibit K** is a true and correct copy of a promissory note dated May 29, 2019, executed by HCMS, as the maker, in the original principal amount of \$400,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business (the “Third HCMS Demand Note”).

26. Attached as **Exhibit L** is a true and correct copy of a promissory note dated June 26, 2019, executed by HCMS, as the maker, in the original principal amount of \$150,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business (the “Fourth HCMS Demand Note,” and collectively with the First HCMS Demand Note, the Second HCMS Demand Note, and Third HCMS Demand Notes, the “HCMS Demand Notes”).

27. Attached as **Exhibit M** is a true and correct copy of a promissory note dated November 27, 2013, executed by HCRE, as the maker, in the original principal amount of \$100,000 in favor of Highland that was and is maintained in Highland’s books and records in the

ordinary course of business and that was provided to PwC in connection with its annual audits (the “First HCRE Demand Note”).

28. Attached as **Exhibit N** is a true and correct copy of a promissory note dated October 12, 2017, executed by HCRE, as the maker, in the original principal amount of \$2,500,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “Second HCRE Demand Note”).

29. Attached as **Exhibit O** is a true and correct copy of a promissory note dated October 15, 2018, executed by HCRE, as the maker, in the original principal amount of \$750,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “Third HCRE Demand Note”).

30. Attached as **Exhibit P** is a true and correct copy of a promissory note dated September 25, 2019, executed by HCRE, as the maker, in the original principal amount of \$900,000 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business (the “Fourth HCRE Demand Note,” and collectively with the First HCRE Demand Note, the Second HCRE Demand Note, and Third HCRE Demand Notes, the “HCRE Demand Notes,” and together with the Dondero Demand Notes and the HCMS Demand Notes, the “Demand Notes”).

31. Attached as **Exhibit A** is a true and correct copy of a promissory note dated May 31, 2017, executed by NexPoint, as the maker, in the original principal amount of \$30,746,812.23 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary

course of business and that was provided to PwC in connection with its annual audits (the “NexPoint Note”).

32. Attached as **Exhibit Q** is a true and correct copy of a promissory note dated May 31, 2017, executed by HCMS, as the maker, in the original principal amount of \$20,247,628.02 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “HCMS Term Note”).

33. Attached as **Exhibit R** is a true and correct copy of a promissory note dated May 31, 2017, executed by HCRE, as the maker, in the original principal amount of \$6,059,831.51 in favor of Highland that was and is maintained in Highland’s books and records in the ordinary course of business and that was provided to PwC in connection with its annual audits (the “HCRE Term Note,” and together with the NexPoint Term Note and the HCMS Term Note, the “Term Notes”).

34. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First Dondero Note was \$3,708,273.71, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the First Dondero Note was \$3,808,783.89.

35. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second Dondero Note was \$2,647,880.12, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the Second Dondero Note was \$2,727,300.55.

36. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Third Dondero Note was \$2,647,859.55, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Third Dondero Note was \$2,727,280.61.



37. Thus, (a) as of December 11, 2020, the unpaid principal and accrued interest due under the Dondero Notes was \$9,004,013.07, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the Dondero Notes was \$9,263,365.05.

38. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First HCMFA Note was \$2,493,401.61, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the First Dondero Note was \$2,553,982.49.

39. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second HCMFA Note was \$5,194,251.45, and (b) as of December 17, 2021, the unpaid principal and accrued interest due under the Second HCMFA Note was \$5,320,453.60.

40. Thus, as of (a) December 11, 2020, the unpaid principal and accrued interest due under the HCMFA Notes was \$7,687,653.06, and as of (b) December 17, 2020, the unpaid principal and accrued interest due under the HCMFA Notes was \$7,874,436.09.

41. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First HCMS Demand Note was \$162,033.91, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the First HCMS Demand Note was \$166,777.82.

42. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second HCMS Demand Note was \$215,402.81, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Second HCMS Demand Note was \$222,082.34.

43. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Third HCMS Demand Note was \$414,842.81, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Third HCMS Demand Note was \$424,922.32.

44. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Fourth HCMS Demand Note was \$155,239.90, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Fourth HCMS Demand Note was \$158,980.33.

45. Thus, as of (a) December 11, 2020, the unpaid principal and accrued interest due under the HCMS Demand Notes was \$947,519.43, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCMS Demand Notes was \$972,762.81.

46. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the First HCRE Demand Note was \$171,978.10, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the First HCRE Demand Note was \$185,979.85.

47. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Second HCRE Demand Note was \$3,191,342.72, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Second HCRE Demand Note was \$3,380,385.47.

48. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Third HCRE Demand Note was \$885,908.76, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Third HCRE Demand Note was \$938,970.62.

49. As of (a) December 11, 2020, the unpaid principal and accrued interest due under the Fourth HCRE Demand Note was \$762,941.38, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the Fourth HCRE Demand Note was \$825,042.29.

50. Thus, as of (a) December 11, 2020, the unpaid principal and accrued interest due under the HCRE Demand Notes was \$5,012,170.96, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCRE Demand Notes was \$5,330,378.23.

51. As of (a) January 8, 2021, the unpaid principal and accrued interest due under the NexPoint Term Note was \$24,471,804.98, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the NexPoint Term Note was \$24,383,877.27.<sup>10</sup>

52. As of (a) January 8, 2021, the unpaid principal and accrued interest due under the HCMS Term Note was \$6,758,507.81, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCMS Term Note was \$6,748,456.31<sup>11</sup>.

53. As of (a) January 8, 2021, the unpaid principal and accrued interest due under the HCRE Term Note was \$6,145,466.84, and as of (b) December 17, 2021, the unpaid principal and accrued interest due under the HCRE Term Note was \$5,899,962.22.<sup>12</sup>

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

Dated: December 17, 2021

/s/ David Klos  
David Klos

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<sup>10</sup> Total unpaid principal and interest due actually decreased from January 8, 2021 to December 17, 2021 because a payment of \$1,406,111.92 made January 14, 2021, which reduced the total principal and interest then-outstanding.

<sup>11</sup> Total unpaid outstanding principal and interest due actually decreased from January 8, 2021 to December 17, 2021 because a payment of \$181,226.83 made January 21, 2021, which reduced the total principal and interest then-outstanding.

<sup>12</sup> Total unpaid principal and interest due actually decreased from January 8, 2021 to December 17, 2021 because a payment of \$665,811.09 made January 21, 2021, which reduced the total principal and interest then-outstanding.

# EXHIBIT A

## PROMISSORY NOTE

\$30,746,812.33

May 31, 2017

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from NexPoint Advisors, L.P., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interested represented thereby.

FOR VALUE RECEIVED, NEXPOINT ADVISORS, L.P. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of THIRTY MILLION, SEVEN HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED TWELVE AND 33/100 DOLLARS (\$30,746,812.33), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of six percent (6.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31<sup>st</sup> day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same

shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

**MAKER:**

NEXPOINT ADVISORS, L.P.

By: NexPoint Advisors GP, LLC, its general partner

By:  \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

**PRIOR NOTES**

<b>Loan Date</b>	<b>Initial Note Amount</b>	<b>Interest Rate</b>	<b>Principal and Interest Outstanding as of May 31, 2017</b>
8/21/14	\$4,000,000	6.00%	\$4,616,739.73
10/1/14	\$6,000,000	6.00%	\$6,959,671.23
11/14/14	\$2,500,000	6.00%	\$2,881,780.82
1/29/15	\$3,100,000	6.00%	\$3,534,679.45
7/22/15	\$12,075,000	6.00%	\$12,753,941.10
	<b>\$27,675,000</b>		<b>\$30,746,812.33</b>

## **EXHIBIT B**



**NPA \$30.7M**

**Closing Date** 5/31/2017  
**Total Commitment** \$ 30,746,812  
**Rate** 6.000%  
**Maturity:** 12/31/2047

Date	Interest Accrual	Interest Paid	Accrued Interest	Beg Prin Bal	Principal Paid	Ending Prin Bal	Total Paid
5/31/2017						\$ 30,746,812	
6/30/2017	151,628.12		151,628.12	30,746,812.33		30,746,812.33	
7/31/2017	156,682.39		308,310.50	30,746,812.33		30,746,812.33	
8/31/2017	156,682.39		464,992.89	30,746,812.33		30,746,812.33	
9/30/2017	151,628.12		616,621.00	30,746,812.33		30,746,812.33	
10/20/2017	101,085.41	(717,706.41)	-	30,746,812.33	(82,293.59)	30,664,518.74	(800,000.00)
10/31/2017	55,448.17		55,448.17	30,664,518.74		30,664,518.74	
11/30/2017	151,222.28		206,670.46	30,664,518.74		30,664,518.74	
12/5/2017	25,203.71	(358,904.83)	(127,030.67)	30,664,518.74	(942,600.16)	29,721,918.58	(1,301,504.99)
12/31/2017	127,030.67		(0.00)	29,721,918.58		29,721,918.58	
1/31/2018	151,459.64		151,459.64	29,721,918.58		29,721,918.58	
2/28/2018	136,802.26		288,261.90	29,721,918.58		29,721,918.58	
3/31/2018	151,459.64		439,721.54	29,721,918.58		29,721,918.58	
4/10/2018	48,857.95	(439,721.54)	48,857.95	29,721,918.58		29,721,918.58	(439,721.54)
4/30/2018	97,715.90		146,573.85	29,721,918.58		29,721,918.58	
5/1/2018	4,885.79	(146,573.85)	4,885.79	29,721,918.58		29,721,918.58	(146,573.85)
5/9/2018	39,086.36	(879,927.65)	(835,955.50)	29,721,918.58		29,721,918.58	(879,927.65)
5/31/2018	107,487.49		(728,468.01)	29,721,918.58		29,721,918.58	
6/30/2018	146,573.85		(581,894.17)	29,721,918.58		29,721,918.58	
7/31/2018	151,459.64		(430,434.53)	29,721,918.58		29,721,918.58	
8/31/2018	151,459.64		(278,974.89)	29,721,918.58		29,721,918.58	
9/5/2018	24,428.97		(254,545.91)	29,721,918.58	(280,765.40)	29,441,153.18	(280,765.40)
9/21/2018	77,434.27		(177,111.65)	29,441,153.18	(1,023,750.00)	28,417,403.18	(1,023,750.00)
9/30/2018	42,042.19		(135,069.46)	28,417,403.18		28,417,403.18	
10/31/2018	144,811.97		9,742.51	28,417,403.18		28,417,403.18	
11/30/2018	140,140.62		149,883.13	28,417,403.18		28,417,403.18	
12/18/2018	84,084.37	(294,695.10)	(60,727.60)	28,417,403.18		28,417,403.18	(294,695.10)
12/31/2018	60,727.60		(0.00)	28,417,403.18		28,417,403.18	

1/31/2019	144,811.97		144,811.97	28,417,403.18		28,417,403.18	
2/28/2019	130,797.91		275,609.88	28,417,403.18		28,417,403.18	
3/29/2019	135,469.26	(411,079.15)	(0.00)	28,417,403.18	(338,920.85)	28,078,482.33	(750,000.00)
3/31/2019	9,231.28		9,231.28	28,078,482.33		28,078,482.33	
4/16/2019	73,850.25	(83,081.53)	0.00	28,078,482.33	(1,216,918.47)	26,861,563.86	(1,300,000.00)
4/30/2019	61,818.39		61,818.40	26,861,563.86		26,861,563.86	
5/31/2019	136,883.59	(198,701.98)	0.00	26,861,563.86	198,701.98	27,060,265.84	-
6/4/2019	17,793.05	(17,793.05)	0.00	27,060,265.84	(282,206.95)	26,778,058.89	(300,000.00)
6/19/2019	66,028.09	(66,028.10)	(0.00)	26,778,058.89	(2,033,971.90)	24,744,086.99	(2,100,000.00)
6/30/2019	44,742.73		44,742.73	24,744,086.99		24,744,086.99	
7/9/2019	36,607.69	(81,350.42)	(0.00)	24,744,086.99	(548,649.58)	24,195,437.41	(630,000.00)
7/31/2019	87,501.31		87,501.31	24,195,437.41		24,195,437.41	
8/13/2019	51,705.32	(139,206.62)	0.00	24,195,437.41	(1,160,793.38)	23,034,644.03	(1,300,000.00)
8/31/2019	68,157.30		68,157.31	23,034,644.03		23,034,644.03	
9/30/2019	113,595.50		181,752.81	23,034,644.03		23,034,644.03	
10/15/2019	56,797.75		238,550.56	23,034,644.03		23,034,644.03	
10/31/2019	60,584.27		299,134.83	23,034,644.03		23,034,644.03	
11/30/2019	113,595.50		412,730.34	23,034,644.03		23,034,644.03	
12/30/2019	113,595.50	-530,112.36	(3,786.52)	23,034,644.03		23,034,644.03	(530,112.36)
12/31/2019	3,786.52		0.00	23,034,644.03		23,034,644.03	
1/31/2020	117,382.02		117,382.02	23,034,644.03		23,034,644.03	
2/29/2020	109,808.99		227,191.01	23,034,644.03		23,034,644.03	
3/31/2020	117,382.02		344,573.03	23,034,644.03		23,034,644.03	
4/30/2020	113,595.50		458,168.54	23,034,644.03		23,034,644.03	
5/31/2020	117,382.02	(575,550.56)	(0.00)	23,034,644.03	575,550.56	23,610,194.59	
6/30/2020	116,433.84		116,433.83	23,610,194.59		23,610,194.59	
7/31/2020	120,314.96		236,748.80	23,610,194.59		23,610,194.59	
8/31/2020	120,314.96		357,063.76	23,610,194.59		23,610,194.59	
9/30/2020	116,433.84		473,497.60	23,610,194.59		23,610,194.59	
10/31/2020	120,314.96		593,812.56	23,610,194.59		23,610,194.59	
11/30/2020	116,433.84		710,246.40	23,610,194.59		23,610,194.59	
12/31/2020	120,314.96		830,561.36	23,610,194.59		23,610,194.59	
1/14/2021	54,335.79	(830,561.36)	54,335.79	23,610,194.59	(575,550.56)	23,034,644.03	(1,406,111.92)
1/31/2021	64,370.79		118,706.58	23,034,644.03		23,034,644.03	
2/28/2021	106,022.47		224,729.05	23,034,644.03		23,034,644.03	
3/31/2021	117,382.02		342,111.07	23,034,644.03		23,034,644.03	
4/30/2021	113,595.50		455,706.58	23,034,644.03		23,034,644.03	
5/31/2021	117,382.02		573,088.60	23,034,644.03		23,034,644.03	

6/30/2021	113,595.50	686,684.10	23,034,644.03	23,034,644.03
7/31/2021	117,382.02	804,066.13	23,034,644.03	23,034,644.03
8/31/2021	117,382.02	921,448.15	23,034,644.03	23,034,644.03
9/30/2021	113,595.50	1,035,043.65	23,034,644.03	23,034,644.03
10/31/2021	117,382.02	1,152,425.67	23,034,644.03	23,034,644.03
11/30/2021	113,595.50	1,266,021.18	23,034,644.03	23,034,644.03
12/31/2021	117,382.02	1,383,403.20	23,034,644.03	23,034,644.03
1/31/2022	117,382.02	1,500,785.22	23,034,644.03	23,034,644.03
2/28/2022	106,022.47	1,606,807.69	23,034,644.03	23,034,644.03
3/31/2022	117,382.02	1,724,189.72	23,034,644.03	23,034,644.03
4/30/2022	113,595.50	1,837,785.22	23,034,644.03	23,034,644.03
5/31/2022	117,382.02	1,955,167.24	23,034,644.03	23,034,644.03
6/30/2022	113,595.50	2,068,762.75	23,034,644.03	23,034,644.03
7/31/2022	117,382.02	2,186,144.77	23,034,644.03	23,034,644.03
8/31/2022	117,382.02	2,303,526.79	23,034,644.03	23,034,644.03
9/30/2022	113,595.50	2,417,122.29	23,034,644.03	23,034,644.03
10/31/2022	117,382.02	2,534,504.32	23,034,644.03	23,034,644.03
11/30/2022	113,595.50	2,648,099.82	23,034,644.03	23,034,644.03
12/31/2022	117,382.02	2,765,481.84	23,034,644.03	23,034,644.03
1/31/2023	117,382.02	2,882,863.86	23,034,644.03	23,034,644.03
2/28/2023	106,022.47	2,988,886.34	23,034,644.03	23,034,644.03
3/31/2023	117,382.02	3,106,268.36	23,034,644.03	23,034,644.03
4/30/2023	113,595.50	3,219,863.86	23,034,644.03	23,034,644.03
5/31/2023	117,382.02	3,337,245.88	23,034,644.03	23,034,644.03
6/30/2023	113,595.50	3,450,841.39	23,034,644.03	23,034,644.03
7/31/2023	117,382.02	3,568,223.41	23,034,644.03	23,034,644.03
8/31/2023	117,382.02	3,685,605.43	23,034,644.03	23,034,644.03
9/30/2023	113,595.50	3,799,200.94	23,034,644.03	23,034,644.03
10/31/2023	117,382.02	3,916,582.96	23,034,644.03	23,034,644.03
11/30/2023	113,595.50	4,030,178.46	23,034,644.03	23,034,644.03
12/31/2023	117,382.02	4,147,560.48	23,034,644.03	23,034,644.03
1/31/2024	117,382.02	4,264,942.51	23,034,644.03	23,034,644.03
2/29/2024	109,808.99	4,374,751.49	23,034,644.03	23,034,644.03
3/31/2024	117,382.02	4,492,133.52	23,034,644.03	23,034,644.03
4/30/2024	113,595.50	4,605,729.02	23,034,644.03	23,034,644.03
5/31/2024	117,382.02	4,723,111.04	23,034,644.03	23,034,644.03
6/30/2024	113,595.50	4,836,706.55	23,034,644.03	23,034,644.03
7/31/2024	117,382.02	4,954,088.57	23,034,644.03	23,034,644.03

8/31/2024	117,382.02	5,071,470.59	23,034,644.03	23,034,644.03
9/30/2024	113,595.50	5,185,066.10	23,034,644.03	23,034,644.03
10/31/2024	117,382.02	5,302,448.12	23,034,644.03	23,034,644.03
11/30/2024	113,595.50	5,416,043.62	23,034,644.03	23,034,644.03
12/31/2024	117,382.02	5,533,425.64	23,034,644.03	23,034,644.03
1/31/2025	117,382.02	5,650,807.67	23,034,644.03	23,034,644.03
2/28/2025	106,022.47	5,756,830.14	23,034,644.03	23,034,644.03
3/31/2025	117,382.02	5,874,212.16	23,034,644.03	23,034,644.03
4/30/2025	113,595.50	5,987,807.66	23,034,644.03	23,034,644.03
5/31/2025	117,382.02	6,105,189.68	23,034,644.03	23,034,644.03
6/30/2025	113,595.50	6,218,785.19	23,034,644.03	23,034,644.03
7/31/2025	117,382.02	6,336,167.21	23,034,644.03	23,034,644.03
8/31/2025	117,382.02	6,453,549.23	23,034,644.03	23,034,644.03
9/30/2025	113,595.50	6,567,144.74	23,034,644.03	23,034,644.03
10/31/2025	117,382.02	6,684,526.76	23,034,644.03	23,034,644.03
11/30/2025	113,595.50	6,798,122.26	23,034,644.03	23,034,644.03
12/31/2025	117,382.02	6,915,504.29	23,034,644.03	23,034,644.03
1/31/2026	117,382.02	7,032,886.31	23,034,644.03	23,034,644.03
2/28/2026	106,022.47	7,138,908.78	23,034,644.03	23,034,644.03
3/31/2026	117,382.02	7,256,290.80	23,034,644.03	23,034,644.03
4/30/2026	113,595.50	7,369,886.31	23,034,644.03	23,034,644.03
5/31/2026	117,382.02	7,487,268.33	23,034,644.03	23,034,644.03
6/30/2026	113,595.50	7,600,863.83	23,034,644.03	23,034,644.03
7/31/2026	117,382.02	7,718,245.85	23,034,644.03	23,034,644.03
8/31/2026	117,382.02	7,835,627.87	23,034,644.03	23,034,644.03
9/30/2026	113,595.50	7,949,223.38	23,034,644.03	23,034,644.03
10/31/2026	117,382.02	8,066,605.40	23,034,644.03	23,034,644.03
11/30/2026	113,595.50	8,180,200.91	23,034,644.03	23,034,644.03
12/31/2026	117,382.02	8,297,582.93	23,034,644.03	23,034,644.03
1/31/2027	117,382.02	8,414,964.95	23,034,644.03	23,034,644.03
2/28/2027	106,022.47	8,520,987.42	23,034,644.03	23,034,644.03
3/31/2027	117,382.02	8,638,369.44	23,034,644.03	23,034,644.03
4/30/2027	113,595.50	8,751,964.95	23,034,644.03	23,034,644.03
5/31/2027	117,382.02	8,869,346.97	23,034,644.03	23,034,644.03
6/30/2027	113,595.50	8,982,942.47	23,034,644.03	23,034,644.03
7/31/2027	117,382.02	9,100,324.50	23,034,644.03	23,034,644.03
8/31/2027	117,382.02	9,217,706.52	23,034,644.03	23,034,644.03
9/30/2027	113,595.50	9,331,302.02	23,034,644.03	23,034,644.03

10/31/2027	117,382.02	9,448,684.04	23,034,644.03	23,034,644.03
11/30/2027	113,595.50	9,562,279.55	23,034,644.03	23,034,644.03
12/31/2027	117,382.02	9,679,661.57	23,034,644.03	23,034,644.03
1/31/2028	117,382.02	9,797,043.59	23,034,644.03	23,034,644.03
2/29/2028	109,808.99	9,906,852.58	23,034,644.03	23,034,644.03
3/31/2028	117,382.02	10,024,234.60	23,034,644.03	23,034,644.03
4/30/2028	113,595.50	10,137,830.11	23,034,644.03	23,034,644.03
5/31/2028	117,382.02	10,255,212.13	23,034,644.03	23,034,644.03
6/30/2028	113,595.50	10,368,807.63	23,034,644.03	23,034,644.03
7/31/2028	117,382.02	10,486,189.65	23,034,644.03	23,034,644.03
8/31/2028	117,382.02	10,603,571.68	23,034,644.03	23,034,644.03
9/30/2028	113,595.50	10,717,167.18	23,034,644.03	23,034,644.03
10/31/2028	117,382.02	10,834,549.20	23,034,644.03	23,034,644.03
11/30/2028	113,595.50	10,948,144.71	23,034,644.03	23,034,644.03
12/31/2028	117,382.02	11,065,526.73	23,034,644.03	23,034,644.03
1/31/2029	117,382.02	11,182,908.75	23,034,644.03	23,034,644.03
2/28/2029	106,022.47	11,288,931.22	23,034,644.03	23,034,644.03
3/31/2029	117,382.02	11,406,313.24	23,034,644.03	23,034,644.03
4/30/2029	113,595.50	11,519,908.75	23,034,644.03	23,034,644.03
5/31/2029	117,382.02	11,637,290.77	23,034,644.03	23,034,644.03
6/30/2029	113,595.50	11,750,886.27	23,034,644.03	23,034,644.03
7/31/2029	117,382.02	11,868,268.30	23,034,644.03	23,034,644.03
8/31/2029	117,382.02	11,985,650.32	23,034,644.03	23,034,644.03
9/30/2029	113,595.50	12,099,245.82	23,034,644.03	23,034,644.03
10/31/2029	117,382.02	12,216,627.84	23,034,644.03	23,034,644.03
11/30/2029	113,595.50	12,330,223.35	23,034,644.03	23,034,644.03
12/31/2029	117,382.02	12,447,605.37	23,034,644.03	23,034,644.03
1/31/2030	117,382.02	12,564,987.39	23,034,644.03	23,034,644.03
2/28/2030	106,022.47	12,671,009.86	23,034,644.03	23,034,644.03
3/31/2030	117,382.02	12,788,391.89	23,034,644.03	23,034,644.03
4/30/2030	113,595.50	12,901,987.39	23,034,644.03	23,034,644.03
5/31/2030	117,382.02	13,019,369.41	23,034,644.03	23,034,644.03
6/30/2030	113,595.50	13,132,964.92	23,034,644.03	23,034,644.03
7/31/2030	117,382.02	13,250,346.94	23,034,644.03	23,034,644.03
8/31/2030	117,382.02	13,367,728.96	23,034,644.03	23,034,644.03
9/30/2030	113,595.50	13,481,324.46	23,034,644.03	23,034,644.03
10/31/2030	117,382.02	13,598,706.49	23,034,644.03	23,034,644.03
11/30/2030	113,595.50	13,712,301.99	23,034,644.03	23,034,644.03

12/31/2030	117,382.02	13,829,684.01	23,034,644.03	23,034,644.03
1/31/2031	117,382.02	13,947,066.03	23,034,644.03	23,034,644.03
2/28/2031	106,022.47	14,053,088.51	23,034,644.03	23,034,644.03
3/31/2031	117,382.02	14,170,470.53	23,034,644.03	23,034,644.03
4/30/2031	113,595.50	14,284,066.03	23,034,644.03	23,034,644.03
5/31/2031	117,382.02	14,401,448.05	23,034,644.03	23,034,644.03
6/30/2031	113,595.50	14,515,043.56	23,034,644.03	23,034,644.03
7/31/2031	117,382.02	14,632,425.58	23,034,644.03	23,034,644.03
8/31/2031	117,382.02	14,749,807.60	23,034,644.03	23,034,644.03
9/30/2031	113,595.50	14,863,403.11	23,034,644.03	23,034,644.03
10/31/2031	117,382.02	14,980,785.13	23,034,644.03	23,034,644.03
11/30/2031	113,595.50	15,094,380.63	23,034,644.03	23,034,644.03
12/31/2031	117,382.02	15,211,762.65	23,034,644.03	23,034,644.03
1/31/2032	117,382.02	15,329,144.68	23,034,644.03	23,034,644.03
2/29/2032	109,808.99	15,438,953.66	23,034,644.03	23,034,644.03
3/31/2032	117,382.02	15,556,335.69	23,034,644.03	23,034,644.03
4/30/2032	113,595.50	15,669,931.19	23,034,644.03	23,034,644.03
5/31/2032	117,382.02	15,787,313.21	23,034,644.03	23,034,644.03
6/30/2032	113,595.50	15,900,908.72	23,034,644.03	23,034,644.03
7/31/2032	117,382.02	16,018,290.74	23,034,644.03	23,034,644.03
8/31/2032	117,382.02	16,135,672.76	23,034,644.03	23,034,644.03
9/30/2032	113,595.50	16,249,268.27	23,034,644.03	23,034,644.03
10/31/2032	117,382.02	16,366,650.29	23,034,644.03	23,034,644.03
11/30/2032	113,595.50	16,480,245.79	23,034,644.03	23,034,644.03
12/31/2032	117,382.02	16,597,627.81	23,034,644.03	23,034,644.03
1/31/2033	117,382.02	16,715,009.84	23,034,644.03	23,034,644.03
2/28/2033	106,022.47	16,821,032.31	23,034,644.03	23,034,644.03
3/31/2033	117,382.02	16,938,414.33	23,034,644.03	23,034,644.03
4/30/2033	113,595.50	17,052,009.83	23,034,644.03	23,034,644.03
5/31/2033	117,382.02	17,169,391.85	23,034,644.03	23,034,644.03
6/30/2033	113,595.50	17,282,987.36	23,034,644.03	23,034,644.03
7/31/2033	117,382.02	17,400,369.38	23,034,644.03	23,034,644.03
8/31/2033	117,382.02	17,517,751.40	23,034,644.03	23,034,644.03
9/30/2033	113,595.50	17,631,346.91	23,034,644.03	23,034,644.03
10/31/2033	117,382.02	17,748,728.93	23,034,644.03	23,034,644.03
11/30/2033	113,595.50	17,862,324.43	23,034,644.03	23,034,644.03
12/31/2033	117,382.02	17,979,706.46	23,034,644.03	23,034,644.03
1/31/2034	117,382.02	18,097,088.48	23,034,644.03	23,034,644.03

2/28/2034	106,022.47	18,203,110.95	23,034,644.03	23,034,644.03
3/31/2034	117,382.02	18,320,492.97	23,034,644.03	23,034,644.03
4/30/2034	113,595.50	18,434,088.47	23,034,644.03	23,034,644.03
5/31/2034	117,382.02	18,551,470.50	23,034,644.03	23,034,644.03
6/30/2034	113,595.50	18,665,066.00	23,034,644.03	23,034,644.03
7/31/2034	117,382.02	18,782,448.02	23,034,644.03	23,034,644.03
8/31/2034	117,382.02	18,899,830.04	23,034,644.03	23,034,644.03
9/30/2034	113,595.50	19,013,425.55	23,034,644.03	23,034,644.03
10/31/2034	117,382.02	19,130,807.57	23,034,644.03	23,034,644.03
11/30/2034	113,595.50	19,244,403.08	23,034,644.03	23,034,644.03
12/31/2034	117,382.02	19,361,785.10	23,034,644.03	23,034,644.03
1/31/2035	117,382.02	19,479,167.12	23,034,644.03	23,034,644.03
2/28/2035	106,022.47	19,585,189.59	23,034,644.03	23,034,644.03
3/31/2035	117,382.02	19,702,571.61	23,034,644.03	23,034,644.03
4/30/2035	113,595.50	19,816,167.12	23,034,644.03	23,034,644.03
5/31/2035	117,382.02	19,933,549.14	23,034,644.03	23,034,644.03
6/30/2035	113,595.50	20,047,144.64	23,034,644.03	23,034,644.03
7/31/2035	117,382.02	20,164,526.67	23,034,644.03	23,034,644.03
8/31/2035	117,382.02	20,281,908.69	23,034,644.03	23,034,644.03
9/30/2035	113,595.50	20,395,504.19	23,034,644.03	23,034,644.03
10/31/2035	117,382.02	20,512,886.21	23,034,644.03	23,034,644.03
11/30/2035	113,595.50	20,626,481.72	23,034,644.03	23,034,644.03
12/31/2035	117,382.02	20,743,863.74	23,034,644.03	23,034,644.03
1/31/2036	117,382.02	20,861,245.76	23,034,644.03	23,034,644.03
2/29/2036	109,808.99	20,971,054.75	23,034,644.03	23,034,644.03
3/31/2036	117,382.02	21,088,436.77	23,034,644.03	23,034,644.03
4/30/2036	113,595.50	21,202,032.28	23,034,644.03	23,034,644.03
5/31/2036	117,382.02	21,319,414.30	23,034,644.03	23,034,644.03
6/30/2036	113,595.50	21,433,009.80	23,034,644.03	23,034,644.03
7/31/2036	117,382.02	21,550,391.82	23,034,644.03	23,034,644.03
8/31/2036	117,382.02	21,667,773.85	23,034,644.03	23,034,644.03
9/30/2036	113,595.50	21,781,369.35	23,034,644.03	23,034,644.03
10/31/2036	117,382.02	21,898,751.37	23,034,644.03	23,034,644.03
11/30/2036	113,595.50	22,012,346.88	23,034,644.03	23,034,644.03
12/31/2036	117,382.02	22,129,728.90	23,034,644.03	23,034,644.03
1/31/2037	117,382.02	22,247,110.92	23,034,644.03	23,034,644.03
2/28/2037	106,022.47	22,353,133.39	23,034,644.03	23,034,644.03
3/31/2037	117,382.02	22,470,515.41	23,034,644.03	23,034,644.03

4/30/2037	113,595.50	22,584,110.92	23,034,644.03	23,034,644.03
5/31/2037	117,382.02	22,701,492.94	23,034,644.03	23,034,644.03
6/30/2037	113,595.50	22,815,088.44	23,034,644.03	23,034,644.03
7/31/2037	117,382.02	22,932,470.47	23,034,644.03	23,034,644.03
8/31/2037	117,382.02	23,049,852.49	23,034,644.03	23,034,644.03
9/30/2037	113,595.50	23,163,447.99	23,034,644.03	23,034,644.03
10/31/2037	117,382.02	23,280,830.01	23,034,644.03	23,034,644.03
11/30/2037	113,595.50	23,394,425.52	23,034,644.03	23,034,644.03
12/31/2037	117,382.02	23,511,807.54	23,034,644.03	23,034,644.03
1/31/2038	117,382.02	23,629,189.56	23,034,644.03	23,034,644.03
2/28/2038	106,022.47	23,735,212.03	23,034,644.03	23,034,644.03
3/31/2038	117,382.02	23,852,594.06	23,034,644.03	23,034,644.03
4/30/2038	113,595.50	23,966,189.56	23,034,644.03	23,034,644.03
5/31/2038	117,382.02	24,083,571.58	23,034,644.03	23,034,644.03
6/30/2038	113,595.50	24,197,167.09	23,034,644.03	23,034,644.03
7/31/2038	117,382.02	24,314,549.11	23,034,644.03	23,034,644.03
8/31/2038	117,382.02	24,431,931.13	23,034,644.03	23,034,644.03
9/30/2038	113,595.50	24,545,526.63	23,034,644.03	23,034,644.03
10/31/2038	117,382.02	24,662,908.66	23,034,644.03	23,034,644.03
11/30/2038	113,595.50	24,776,504.16	23,034,644.03	23,034,644.03
12/31/2038	117,382.02	24,893,886.18	23,034,644.03	23,034,644.03
1/31/2039	117,382.02	25,011,268.20	23,034,644.03	23,034,644.03
2/28/2039	106,022.47	25,117,290.68	23,034,644.03	23,034,644.03
3/31/2039	117,382.02	25,234,672.70	23,034,644.03	23,034,644.03
4/30/2039	113,595.50	25,348,268.20	23,034,644.03	23,034,644.03
5/31/2039	117,382.02	25,465,650.22	23,034,644.03	23,034,644.03
6/30/2039	113,595.50	25,579,245.73	23,034,644.03	23,034,644.03
7/31/2039	117,382.02	25,696,627.75	23,034,644.03	23,034,644.03
8/31/2039	117,382.02	25,814,009.77	23,034,644.03	23,034,644.03
9/30/2039	113,595.50	25,927,605.28	23,034,644.03	23,034,644.03
10/31/2039	117,382.02	26,044,987.30	23,034,644.03	23,034,644.03
11/30/2039	113,595.50	26,158,582.80	23,034,644.03	23,034,644.03
12/31/2039	117,382.02	26,275,964.82	23,034,644.03	23,034,644.03
1/31/2040	117,382.02	26,393,346.85	23,034,644.03	23,034,644.03
2/29/2040	109,808.99	26,503,155.83	23,034,644.03	23,034,644.03
3/31/2040	117,382.02	26,620,537.86	23,034,644.03	23,034,644.03
4/30/2040	113,595.50	26,734,133.36	23,034,644.03	23,034,644.03
5/31/2040	117,382.02	26,851,515.38	23,034,644.03	23,034,644.03



6/30/2040	113,595.50	26,965,110.89	23,034,644.03	23,034,644.03
7/31/2040	117,382.02	27,082,492.91	23,034,644.03	23,034,644.03
8/31/2040	117,382.02	27,199,874.93	23,034,644.03	23,034,644.03
9/30/2040	113,595.50	27,313,470.44	23,034,644.03	23,034,644.03
10/31/2040	117,382.02	27,430,852.46	23,034,644.03	23,034,644.03
11/30/2040	113,595.50	27,544,447.96	23,034,644.03	23,034,644.03
12/31/2040	117,382.02	27,661,829.98	23,034,644.03	23,034,644.03
1/31/2041	117,382.02	27,779,212.01	23,034,644.03	23,034,644.03
2/28/2041	106,022.47	27,885,234.48	23,034,644.03	23,034,644.03
3/31/2041	117,382.02	28,002,616.50	23,034,644.03	23,034,644.03
4/30/2041	113,595.50	28,116,212.00	23,034,644.03	23,034,644.03
5/31/2041	117,382.02	28,233,594.02	23,034,644.03	23,034,644.03
6/30/2041	113,595.50	28,347,189.53	23,034,644.03	23,034,644.03
7/31/2041	117,382.02	28,464,571.55	23,034,644.03	23,034,644.03
8/31/2041	117,382.02	28,581,953.57	23,034,644.03	23,034,644.03
9/30/2041	113,595.50	28,695,549.08	23,034,644.03	23,034,644.03
10/31/2041	117,382.02	28,812,931.10	23,034,644.03	23,034,644.03
11/30/2041	113,595.50	28,926,526.60	23,034,644.03	23,034,644.03
12/31/2041	117,382.02	29,043,908.63	23,034,644.03	23,034,644.03
1/31/2042	117,382.02	29,161,290.65	23,034,644.03	23,034,644.03
2/28/2042	106,022.47	29,267,313.12	23,034,644.03	23,034,644.03
3/31/2042	117,382.02	29,384,695.14	23,034,644.03	23,034,644.03
4/30/2042	113,595.50	29,498,290.64	23,034,644.03	23,034,644.03
5/31/2042	117,382.02	29,615,672.67	23,034,644.03	23,034,644.03
6/30/2042	113,595.50	29,729,268.17	23,034,644.03	23,034,644.03
7/31/2042	117,382.02	29,846,650.19	23,034,644.03	23,034,644.03
8/31/2042	117,382.02	29,964,032.21	23,034,644.03	23,034,644.03
9/30/2042	113,595.50	30,077,627.72	23,034,644.03	23,034,644.03
10/31/2042	117,382.02	30,195,009.74	23,034,644.03	23,034,644.03
11/30/2042	113,595.50	30,308,605.25	23,034,644.03	23,034,644.03
12/31/2042	117,382.02	30,425,987.27	23,034,644.03	23,034,644.03
1/31/2043	117,382.02	30,543,369.29	23,034,644.03	23,034,644.03
2/28/2043	106,022.47	30,649,391.76	23,034,644.03	23,034,644.03
3/31/2043	117,382.02	30,766,773.78	23,034,644.03	23,034,644.03
4/30/2043	113,595.50	30,880,369.29	23,034,644.03	23,034,644.03
5/31/2043	117,382.02	30,997,751.31	23,034,644.03	23,034,644.03
6/30/2043	113,595.50	31,111,346.81	23,034,644.03	23,034,644.03
7/31/2043	117,382.02	31,228,728.84	23,034,644.03	23,034,644.03

8/31/2043	117,382.02	31,346,110.86	23,034,644.03	23,034,644.03
9/30/2043	113,595.50	31,459,706.36	23,034,644.03	23,034,644.03
10/31/2043	117,382.02	31,577,088.38	23,034,644.03	23,034,644.03
11/30/2043	113,595.50	31,690,683.89	23,034,644.03	23,034,644.03
12/31/2043	117,382.02	31,808,065.91	23,034,644.03	23,034,644.03
1/31/2044	117,382.02	31,925,447.93	23,034,644.03	23,034,644.03
2/29/2044	109,808.99	32,035,256.92	23,034,644.03	23,034,644.03
3/31/2044	117,382.02	32,152,638.94	23,034,644.03	23,034,644.03
4/30/2044	113,595.50	32,266,234.45	23,034,644.03	23,034,644.03
5/31/2044	117,382.02	32,383,616.47	23,034,644.03	23,034,644.03
6/30/2044	113,595.50	32,497,211.97	23,034,644.03	23,034,644.03
7/31/2044	117,382.02	32,614,593.99	23,034,644.03	23,034,644.03
8/31/2044	117,382.02	32,731,976.02	23,034,644.03	23,034,644.03
9/30/2044	113,595.50	32,845,571.52	23,034,644.03	23,034,644.03
10/31/2044	117,382.02	32,962,953.54	23,034,644.03	23,034,644.03
11/30/2044	113,595.50	33,076,549.05	23,034,644.03	23,034,644.03
12/31/2044	117,382.02	33,193,931.07	23,034,644.03	23,034,644.03
1/31/2045	117,382.02	33,311,313.09	23,034,644.03	23,034,644.03
2/28/2045	106,022.47	33,417,335.56	23,034,644.03	23,034,644.03
3/31/2045	117,382.02	33,534,717.58	23,034,644.03	23,034,644.03
4/30/2045	113,595.50	33,648,313.09	23,034,644.03	23,034,644.03
5/31/2045	117,382.02	33,765,695.11	23,034,644.03	23,034,644.03
6/30/2045	113,595.50	33,879,290.61	23,034,644.03	23,034,644.03
7/31/2045	117,382.02	33,996,672.64	23,034,644.03	23,034,644.03
8/31/2045	117,382.02	34,114,054.66	23,034,644.03	23,034,644.03
9/30/2045	113,595.50	34,227,650.16	23,034,644.03	23,034,644.03
10/31/2045	117,382.02	34,345,032.18	23,034,644.03	23,034,644.03
11/30/2045	113,595.50	34,458,627.69	23,034,644.03	23,034,644.03
12/31/2045	117,382.02	34,576,009.71	23,034,644.03	23,034,644.03
1/31/2046	117,382.02	34,693,391.73	23,034,644.03	23,034,644.03
2/28/2046	106,022.47	34,799,414.20	23,034,644.03	23,034,644.03
3/31/2046	117,382.02	34,916,796.23	23,034,644.03	23,034,644.03
4/30/2046	113,595.50	35,030,391.73	23,034,644.03	23,034,644.03
5/31/2046	117,382.02	35,147,773.75	23,034,644.03	23,034,644.03
6/30/2046	113,595.50	35,261,369.26	23,034,644.03	23,034,644.03
7/31/2046	117,382.02	35,378,751.28	23,034,644.03	23,034,644.03
8/31/2046	117,382.02	35,496,133.30	23,034,644.03	23,034,644.03
9/30/2046	113,595.50	35,609,728.80	23,034,644.03	23,034,644.03

10/31/2046	117,382.02	35,727,110.83	23,034,644.03	23,034,644.03
11/30/2046	113,595.50	35,840,706.33	23,034,644.03	23,034,644.03
12/31/2046	117,382.02	35,958,088.35	23,034,644.03	23,034,644.03
1/31/2047	117,382.02	36,075,470.37	23,034,644.03	23,034,644.03
2/28/2047	106,022.47	36,181,492.85	23,034,644.03	23,034,644.03
3/31/2047	117,382.02	36,298,874.87	23,034,644.03	23,034,644.03
4/30/2047	113,595.50	36,412,470.37	23,034,644.03	23,034,644.03
5/31/2047	117,382.02	36,529,852.39	23,034,644.03	23,034,644.03
6/30/2047	113,595.50	36,643,447.90	23,034,644.03	23,034,644.03
7/31/2047	117,382.02	36,760,829.92	23,034,644.03	23,034,644.03
8/31/2047	117,382.02	36,878,211.94	23,034,644.03	23,034,644.03
9/30/2047	113,595.50	36,991,807.45	23,034,644.03	23,034,644.03
10/31/2047	117,382.02	37,109,189.47	23,034,644.03	23,034,644.03

## EXHIBIT C

**Highland Capital Management, L.P. - Cash**

**Next 13 Weeks Commencing December 14, 2020**

(in thousands)

CONFIDENTIAL DRAFT FOR ILLUSTRATIVE PURPOSES ONLY - NOT FINAL OR APPROVED FOR FURTHER DISTRIBUTION

	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week beginning	12/7	12/14	12/21	12/28	1/4	1/11	1/18	1/25	2/1	2/8	2/15	2/22	3/1	3/8
<b>Beginning unrestricted operating cash</b>	\$ 12,537	\$ 11,948	\$ 10,684	\$ 11,051	\$ 11,771	\$ 11,048	\$ 11,188	\$ 11,353	\$ 10,486	\$ 11,445	\$ 10,860	\$ 10,279	\$ 8,145	\$ 8,381
<b>Operating Receipts</b>														
Management fees	-	-	-	-	-	-	-	-	676	-	-	-	-	-
CLOs	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hedge funds	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Private Equity, PetroCap, Port Co's	-	-	-	-	63	-	-	-	-	-	270	-	-	-
Separate accounts	-	-	776	-	-	-	-	750	165	-	579	-	-	-
Management fees - managed funds	\$ -	\$ -	\$ 776	\$ -	\$ 63	\$ -	\$ -	\$ 750	\$ 841	\$ -	\$ 849	\$ -	\$ -	\$ -
HCMFA / NPA investment support	-	-	668	-	-	668	-	-	668	-	-	-	668	-
Shared services receipts	39	-	168	385	-	168	290	135	-	290	60	15	-	-
Intercompany and shared services revenue	39	-	836	385	-	836	290	135	668	290	60	15	668	-
Fund reimbursements	-	-	60	-	-	-	100	-	-	-	100	-	-	-
Interest receipts on notes receivable	-	-	-	2,051	-	-	-	-	-	-	-	-	-	-
Dividend receipts (unencumbered)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other miscellaneous receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total other receipts	\$ -	\$ -	\$ 60	\$ 2,051	\$ -	\$ -	\$ 100	\$ -	\$ -	\$ -	\$ 100	\$ -	\$ -	\$ -
<b>Total operating receipts</b>	\$ 39	\$ -	\$ 1,672	\$ 2,436	\$ 63	\$ 836	\$ 390	\$ 885	\$ 1,509	\$ 290	\$ 1,009	\$ 15	\$ 668	\$ -
<b>Compensation and benefits</b>														
Payroll, benefits, and taxes + exp reimb	(408)	(31)	-	(556)	-	(471)	-	(561)	-	(535)	-	(625)	-	(460)
Cash bonuses	-	-	-	-	-	-	-	-	-	-	-	(3,394)	-	-
<b>Total compensation and benefits</b>	\$ (408)	\$ (31)	\$ -	\$ (556)	\$ -	\$ (471)	\$ -	\$ (561)	\$ -	\$ (535)	\$ -	\$ (4,019)	\$ -	\$ (460)
<b>General overhead</b>														
Outside legal (ordinary course)	(62)	-	(499)	-	(560)	-	-	(560)	-	-	-	(560)	-	-
Independent director fees	-	-	-	(210)	-	-	-	-	(210)	-	-	-	(210)	-
General overhead - critical vendors (pre-petition)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
General overhead - post-petition vendors	(158)	(1,233)	(275)	(275)	(225)	(225)	(225)	(225)	(340)	(340)	(340)	(340)	(222)	(222)
<b>Total general overhead</b>	\$ (220)	\$ (1,233)	\$ (774)	\$ (485)	\$ (785)	\$ (225)	\$ (225)	\$ (785)	\$ (550)	\$ (340)	\$ (340)	\$ (900)	\$ (432)	\$ (222)
<b>Net change in cash due to operating activity</b>	<b>(589)</b>	<b>(1,264)</b>	<b>898</b>	<b>1,395</b>	<b>(723)</b>	<b>140</b>	<b>165</b>	<b>(461)</b>	<b>959</b>	<b>(585)</b>	<b>669</b>	<b>(4,904)</b>	<b>236</b>	<b>(682)</b>
<b>Re-org related - payments direct to professionals</b>														
Debtor bankruptcy counsel	-	-	-	(300)	-	-	-	(720)	-	-	-	(720)	-	-
Debtor FA/CRO	-	-	-	-	-	-	-	(300)	-	-	-	(300)	-	-
Compensation consultant	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Committee counsel	-	-	(359)	(339)	-	-	-	(600)	-	-	-	(600)	-	-
Committee FA	-	-	(172)	(138)	-	-	-	(480)	-	-	-	(480)	-	-
Claims / noticing agent	-	-	-	-	-	-	-	(30)	-	-	-	(30)	-	-
Regulatory & compliance counsel	-	-	-	(100)	-	-	-	(100)	-	-	-	(100)	-	-
Mediation	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee	-	-	-	-	-	-	-	(175)	-	-	-	-	-	-
<b>Total re-org related</b>	\$ -	\$ -	\$ (531)	\$ (877)	\$ -	\$ -	\$ -	\$ (2,405)	\$ -	\$ -	\$ -	\$ (2,230)	\$ -	\$ -
<b>Net change in cash from ops + reorg costs</b>	<b>(589)</b>	<b>(1,264)</b>	<b>367</b>	<b>518</b>	<b>(723)</b>	<b>140</b>	<b>165</b>	<b>(2,866)</b>	<b>959</b>	<b>(585)</b>	<b>669</b>	<b>(7,134)</b>	<b>236</b>	<b>(682)</b>
<b>Investing cash flows (principal only on notes)</b>														
Jefferies prime brokerage, net or Select Equity Fund funding	-	-	-	-	-	-	-	2,000	-	-	-	5,000	-	-
Third party fund capital call obligations	-	-	-	-	-	-	-	-	-	-	(1,650)	-	-	-
Third party fund expected distributions	-	-	-	-	-	-	-	-	-	-	400	-	-	-
Highland Capital Management Korea (capital call funding)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Multi Strategy Credit Fund	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Highland Capital Management Latin America	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from outstanding notes	-	-	-	202	-	-	-	-	-	-	-	-	-	-
Divs, paydowns, misc from non-PB assets	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Purchases of other investments (non-PB)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proceeds from other investments (non-PB)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net change in cash due to investing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>202</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2,000</b>	<b>-</b>	<b>-</b>	<b>(1,250)</b>	<b>5,000</b>	<b>-</b>	<b>-</b>
<b>Financing cash flows</b>														
Required equity distributions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity contributions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Existing debt paydowns	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Net change in cash due to financing activities</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Ending unrestricted operating cash</b>	\$ 11,948	\$ 10,684	\$ 11,051	\$ 11,771	\$ 11,048	\$ 11,188	\$ 11,353	\$ 10,486	\$ 11,445	\$ 10,860	\$ 10,279	\$ 8,145	\$ 8,381	\$ 7,699

## EXHIBIT D

## PROMISSORY NOTE

\$3,825,000

February 2, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("*Maker*") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("*Payee*"), in legal and lawful tender of the United States of America, the principal sum of THREE MILLION, EIGHT HUNDRED AND TWENTY-FIVE THOUSAND and 00/100 Dollars (\$3,825,000.00), together with interest, on the terms set forth below (the "*Note*"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "*applicable federal rate*" (2.66%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Tax Loan. This Note is paid to the Maker to help satisfy any current tax obligations of a former partner or current partner.

5. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

6. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

7. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other

amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

8. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

9. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



JAMES DONDERO



# EXHIBIT E

## PROMISSORY NOTE

\$2,500,000

August 1, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("*Maker*") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("*Payee*"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars (\$2,500,000.00), together with interest, on the terms set forth below (the "*Note*"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "*applicable federal rate*" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.



# EXHIBIT F

## PROMISSORY NOTE

\$2,500,000

August 13, 2018

FOR VALUE RECEIVED, JAMES DONDERO ("*Maker*") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT LP ("*Payee*"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars (\$2,500,000.00), together with interest, on the terms set forth below (the "*Note*"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term "*applicable federal rate*" (2.95%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.



# EXHIBIT G

PROMISSORY NOTE

\$2,400,000.00

May 2, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“Maker”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“Payee”), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION FOUR HUNDRED THOUSAND and 00/100 Dollars (\$2,400,000.00), together with interest, on the terms set forth below (the “Note”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.





# EXHIBIT H

## PROMISSORY NOTE

\$5,000,000.00

May 3, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, LP. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of FIVE MILLION and 00/100 Dollars (\$5,000,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.



# EXHIBIT I

## PROMISSORY NOTE

\$150,000.00

March 28, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars (\$150,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term “*applicable federal rate*” (2.88 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



\_\_\_\_\_  
HIGHLAND CAPITAL MANAGEMENT  
SERVICES, INC.

# EXHIBIT J



## PROMISSORY NOTE

\$200,000.00

June 25, 2018

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of TWO HUNDRED THOUSAND and 00/100 Dollars (\$200,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the long-term “*applicable federal rate*” (3.05 %) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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HIGHLAND CAPITAL MANAGEMENT  
SERVICES, INC.

# EXHIBIT K

## PROMISSORY NOTE

\$400,000

May 29, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of FOUR HUNDRED THOUSAND and 00/100 Dollars (\$400,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.39%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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FRANK WATERHOUSE

# EXHIBIT L

## PROMISSORY NOTE

\$150,000

June 26, 2019

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED AND FIFTY THOUSAND and 00/100 Dollars (\$150,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to the short-term “*applicable federal rate*” (2.37%) in effect on the date hereof for loans of such maturity as determined by Section 1274(d) of the Internal Revenue Code, per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**



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FRANK WATERHOUSE



# EXHIBIT M

## PROMISSORY NOTE

\$100,000

November 27, 2013

FOR VALUE RECEIVED, HCRE PARTNERS, LLC (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of ONE HUNDRED THOUSAND and 00/100 Dollars (\$100,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**

  
HCRE PARTNERS, LLC

# EXHIBIT N

## PROMISSORY NOTE

\$2,500,000

October 12, 2017

FOR VALUE RECEIVED, HCRE PARTNERS, LLC ("*Maker*") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. ("*Payee*"), in legal and lawful tender of the United States of America, the principal sum of TWO MILLION, FIVE HUNDRED THOUSAND and 00/100 Dollars (\$2,500,000.00), together with interest, on the terms set forth below (the "*Note*"). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**

  
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HCRE PARTNERS, LLC

# EXHIBIT O

## PROMISSORY NOTE

\$750,000

October 15, 2018

FOR VALUE RECEIVED, HCRE PARTNERS, LLC (“*Maker*”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. (“*Payee*”), in legal and lawful tender of the United States of America, the principal sum of SEVEN HUNDRED FIFTY THOUSAND and 00/100 Dollars (\$750,000.00), together with interest, on the terms set forth below (the “*Note*”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or



performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**

  
HCRE PARTNERS, LLC

# EXHIBIT P

## PROMISSORY NOTE

\$900,000

September 25, 2019

FOR VALUE RECEIVED, HCRE PARTNERS, LLC (“**Maker**”) promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, LP. (“**Payee**”), in legal and lawful tender of the United States of America, the principal sum of NINE HUNDRED THOUSAND and 00/100 Dollars (\$900,000.00), together with interest, on the terms set forth below (the “**Note**”). All sums hereunder are payable to Payee at 300 Crescent Court, Dallas, TX 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at a rate equal to 8.00% per annum from the date hereof until maturity, compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable on demand of the Payee.

2. Payment of Principal and Interest. The accrued interest and principal of this Note shall be due and payable on demand of the Payee.

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys’ Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys’ fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or

performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

**MAKER:**

  
HCRE PARTNERS, LLC

# EXHIBIT Q

## PROMISSORY NOTE

\$20,247,628.02

May 31, 2017

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from Highland Capital Management Services, Inc., as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interest represented thereby.

FOR VALUE RECEIVED, HIGHLAND CAPITAL MANAGEMENT SERVICES, INC. ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of TWENTY MILLION, TWO HUNDRED FORTY SEVEN THOUSAND, SIX HUNDRED TWENTY EIGHT AND 02/100 DOLLARS (\$20,247,628.02), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of two and seventy-five hundredths percent (2.75%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31<sup>st</sup> day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same shall at once become due and payable and subject to those remedies of the holder hereof. No

failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

**MAKER:**

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

By:   
Name:  
Title:

**EXHIBIT A**

**PRIOR NOTES**

<b>Loan Date</b>	<b>Initial Note Amount</b>	<b>Interest Rate</b>	<b>Principal and Interest Outstanding as of May 31, 2017</b>
5/29/15	\$500,000	2.30%	\$523,095
10/1/15	\$350,000	2.58%	\$315,500
10/2/15	\$310,000	2.58%	\$323,301
10/27/15	\$200,000	2.58%	\$208,228
10/28/15	\$200,000	2.58%	\$208,214
10/30/15	\$100,000	2.58%	\$104,093
11/23/15	\$100,000	2.57%	\$103,908
11/24/15	\$250,000	2.57%	\$259,752
2/10/16	\$2,000,000	2.62%	\$ 83,390
2/11/16	\$250,000	2.62%	\$258,524
4/5/16	\$6,000,000	2.25%	\$6,155,712
5/4/16	\$2,700,000	2.24%	\$2,764,954
7/1/16	\$30,000	2.18%	\$30,598
8/5/16	\$525,000	2.18%	\$534,375
8/22/16	\$250,000	2.18%	\$254,465
9/22/16	\$185,000	2.18%	\$187,773
12/12/16	\$7,700,000	2.26%	\$7,781,050
3/31/17	\$150,000	2.78%	\$150,697
	<b>\$21,800,000</b>		<b>\$20,247,628.02</b>



# EXHIBIT R

## PROMISSORY NOTE

\$6,059,831.51

May 31, 2017

THIS PROMISSORY NOTE (this "**Note**") is in substitution for and supersedes in their entirety each of those certain promissory notes described in Exhibit A hereto, from HCRE Partners, LLC, as Maker, and Highland Capital Management, L.P. as Payee (collectively, the "**Prior Notes**"), together with the aggregate outstanding principal and accrued and unpaid interest represented thereby.

FOR VALUE RECEIVED, HCREA PARTNERS, LLC ("**Maker**") promises to pay to the order of HIGHLAND CAPITAL MANAGEMENT, L.P. ("**Payee**"), in legal and lawful tender of the United States of America, the principal sum of SIX MILLION, FIFTY NINE THOUSAND, EIGHT HUNDRED THIRTY ONE AND 51/100 DOLLARS (\$6,059,831.51), together with interest, on the terms set forth below. All sums hereunder are payable to Payee at 300 Crescent Court, Suite 700, Dallas, Texas 75201, or such other address as Payee may specify to Maker in writing from time to time.

1. Interest Rate. The unpaid principal balance of this Note from time to time outstanding shall bear interest at the rate of eight percent (8.00%) per annum from the date hereof until Maturity Date (hereinafter defined), compounded annually on the anniversary of the date of this Note. Interest shall be calculated at a daily rate equal to 1/365th (1/366 in a leap year) of the rate per annum, shall be charged and collected on the actual number of days elapsed, and shall be payable annually.

2. Payment of Principal and Interest. Principal and interest under this Note shall be payable as follows:

2.1 Annual Payment Dates. During the term of this Note, Borrower shall pay the outstanding principal amount of the Note (and all unpaid accrued interest through the date of each such payment) in thirty (30) equal annual payments (the "**Annual Installment**") until the Note is paid in full. Borrower shall pay the Annual Installment on the 31<sup>st</sup> day of December of each calendar year during the term of this Note, commencing on the first such date to occur after the date of execution of this Note.

2.2 Final Payment Date. The final payment in the aggregate amount of the then outstanding and unpaid Note, together with all accrued and unpaid interest thereon, shall become immediately due and payable in full on December 31, 2047 (the "**Maturity Date**").

3. Prepayment Allowed; Renegotiation Discretionary. Maker may prepay in whole or in part the unpaid principal or accrued interest of this Note. Any payments on this Note shall be applied first to unpaid accrued interest hereon, and then to unpaid principal hereof.

4. Acceleration Upon Default. Failure to pay this Note or any installment hereunder as it becomes due shall, at the election of the holder hereof, without notice, demand, presentment, notice of intent to accelerate, notice of acceleration, or any other notice of any kind which are hereby waived, mature the principal of this Note and all interest then accrued, if any, and the same

shall at once become due and payable and subject to those remedies of the holder hereof. No failure or delay on the part of Payee in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

5. Waiver. Maker hereby waives grace, demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind hereunder.

6. Attorneys' Fees. If this Note is not paid at maturity (whether by acceleration or otherwise) and is placed in the hands of an attorney for collection, or if it is collected through a bankruptcy court or any other court after maturity, the Maker shall pay, in addition to all other amounts owing hereunder, all actual expenses of collection, all court costs and reasonable attorneys' fees and expenses incurred by the holder hereof.

7. Limitation on Agreements. All agreements between Maker and Payee, whether now existing or hereafter arising, are hereby limited so that in no event shall the amount paid, or agreed to be paid to Payee for the use, forbearance, or detention of money or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note, exceed the maximum interest rate allowed by law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Payee and Maker in conflict herewith.

8. Governing Law. This Note and the rights and obligations of the parties hereunder shall be governed by the laws of the United States of America and by the laws of the State of Texas, and is performable in Dallas County, Texas.

9. Prior Notes. The original of each of the Prior Notes superseded hereby shall be marked "VOID" by Payee.

**MAKER:**

HCRE PARTNERS, LLC

By:  \_\_\_\_\_

Name: James Dondero

Title:

**EXHIBIT A**  
**PRIOR NOTES**

<b>Loan Date</b>	<b>Initial Note Amount</b>	<b>Interest Rate</b>	<b>Principal and Interest Outstanding as of May 31, 2017</b>
1/9/14	\$100,000.00	8.00%	\$108,000.00
1/29/14	\$600,000.00	8.00%	\$648,000.00
3/10/14	\$2,000,000.00	8.00%	\$2,009,643.84
3/28/14	\$50,000.00	8.00%	\$54,000.00
1/26/15	\$1,500,000.00	8.00%	\$1,545,356.16
4/2/15	\$1,500,000.00	8.00%	\$1,545,356
	<b>\$5,750,000.00</b>		<b>\$6,059,831.51</b>

## **EXHIBIT 29**

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*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760

HAYWARD PLLC  
Melissa S. Hayward (Texas Bar No. 24044908)  
Zachery Z. Annable (Texas Bar No. 24053075)  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for Highland Capital Management, L.P.*

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

<p>In re:</p> <p>HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup></p> <p style="text-align: center;">Reorganized Debtor.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No. 19-34054-sgj11</p>
<p>HIGHLAND CAPITAL MANAGEMENT, L.P.,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,</p> <p style="text-align: center;">Defendant.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Adversary Proceeding No.</p> <p>21-3004-sgj</p>

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**DECLARATION OF HAYLEY R. WINOGRAD IN SUPPORT OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.'S OPPOSITION TO DEFENDANT'S SECOND  
MOTION FOR LEAVE TO AMEND ANSWER**

I, Hayley R. Winograd, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, declare as follows:

1. I am an attorney in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Reorganized Debtor, and I submit this Declaration in support of *Highland Capital Management, L.P.'s Opposition to Defendant's Second Motion for Leave to Amend Answer* (the "Opposition") being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit A** is a true and correct copy of communications from Highland's counsel to HCMFA's counsel on June 25, 2021, producing the May 2, 2019 e-mail.

3. Attached as **Exhibit B** is a true and correct copy of communications from Highland's counsel to HCMFA's counsel on July 2, 2021, producing Word versions of the HCMFA Notes.

Dated: December 30, 2021.

/s/ Hayley R. Winograd  
Hayley R. Winograd

**From:** Hayley R. Winograd  
**Sent:** Friday, June 25, 2021 8:15 PM  
**To:** 'Rukavina, Davor' <[drukavina@munsch.com](mailto:drukavina@munsch.com)>; Vasek, Julian <[jvasek@munsch.com](mailto:jvasek@munsch.com)>  
**Cc:** John A. Morris <[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)>  
**Subject:** Debtor's Production to 1st Set of Discovery - Adv. Proc. 21-3004

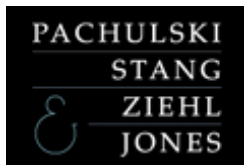
Counsel,

Below please find the link and password to the production of documents responsive to HCMFA's First Set of Discovery to Plaintiff, at bates numbers: D-HCMFA000001 - D-HCMFA095954.

<https://app.everlaw.com/14261/dl/uHZHMIY9wvBBGN7oRKLl42Ijv5aGxY0p8OlpH03HhbUS>  
Password: s4qCG3ppz2DX

Thanks,  
Hayley

**Hayley R. Winograd**  
Pachulski Stang Ziehl & Jones LLP  
Tel: 212.561.7700 | Fax: 212.561.7777  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)



Los Angeles | San Francisco | Wilmington, DE | New York | Houston



**Attachments:** HCMFA 7\_2\_21 Production (2).zip

**From:** Hayley R. Winograd  
**Sent:** Friday, July 2, 2021 12:56 PM  
**To:** 'Rukavina, Davor' <[drukavina@munsch.com](mailto:drukavina@munsch.com)>; 'Vasek, Julian' <[jvasek@munsch.com](mailto:jvasek@munsch.com)>  
**Cc:** John A. Morris <[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)>  
**Subject:** RE: Debtor's Supplemental Production to 2nd Set of Discovery - Adv. Proc. 21-3004

Counsel,

Please find in the attached link the Debtor's supplemental production responsive to HCMFA's Second Set of Requests for Production, at bates numbers: D-HCMFA290880 - D-HCMFA290883.

Thanks,  
Hayley

**Hayley R. Winograd**  
Pachulski Stang Ziehl & Jones LLP  
Tel: 212.561.7700 | Fax: 212.561.7777  
[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)



Los Angeles | San Francisco | Wilmington, DE | New York | Houston

## **EXHIBIT 30**

**From:** John A. Morris  
**Sent:** Monday, October 25, 2021 5:39 PM  
**To:** Deborah R. Deitsch-Perez (deborah.deitschperez@stinson.com); Aigen, Michael P. (michael.aigen@stinson.com); Rukavina, Davor (drukavina@munsch.com); Berghman, Thomas (tberghman@munsch.com); Vasek, Julian (jvasek@munsch.com); Clay Taylor (clay.taylor@bondsellis.com); Bryan Assink (bryan.assink@bondsellis.com); 'ddraper@hellerdraper.com'  
**Cc:** Jeff Pomerantz; Gregory V. Demo; Hayley R. Winograd; La Asia S. Canty  
**Subject:** Highland: Word Versions of the Notes  
**Attachments:** Notes.zip; RE: Form of Loan Consolidation Agreement.msg

Counsel:

As requested, attached are two zip files containing the Word versions of the Notes.

Because they are Word versions, they have not been bates stamped. Therefore, this e-mail will serve as the “proof” of the form, format, timing, and content of the production.

As I mentioned, Highland has retained an expert who has performed his analysis of the Metadata but has not prepared a report. Insofar as Mr. Dondero and his related entities will be liable for Highland’s fees and expenses in the event Highland prevails in this matter, please let me know if the Defendants intend to dispute the authenticity of the Notes or otherwise challenge any aspect of their creation as soon as possible so we don’t unnecessarily incur an expense.

If we don’t hear from you by the close of business on Wednesday on this matter, we will direct the expert to turn his findings into a report for delivery on Friday, make him available for a deposition, and include those expenses in a future supplemental production.

Also, Davor, please produce the Advisors’ 15c report (including responses to questions 1 and 2) from 2020 by the close of business tomorrow (Tuesday) or Highland will move to compel production.

Please let me know if you have any questions.

Regards,

John

**John A. Morris**

Pachulski Stang Ziehl & Jones LLP

Direct Dial: 212.561.7760

Tel: 212.561.7700 | Fax: 212.561.7777

[jmorris@pszlaw.com](mailto:jmorris@pszlaw.com)

[vCard](#) | [Bio](#) | [LinkedIn](#)

